

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

THE HONOURABLE MR JUSTICE FARLAM (RETIRED) - CHAIRPERSON
MR TOKOTA SC
MS HEMRAJ SC

HELD ON

DAY 289

11 SEPTEMBER 2014

PAGES 37590 TO 37805



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64 10th Avenue, Highlands North, Johannesburg
P O Box 721, Highlands North, 2037
Tel: 011-440-3647 Fax: 011-440-9119 Cell: 083 273-5335
E-mail: realtime@mweb.co.za
Web Address: <http://www.realtimesa.co.za>



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1 [PROCEEDINGS ON 11 SEPTEMBER 2014]
 2 [09:12] CHAIRPERSON: The Commission resumes. Mr
 3 Jamieson, you're still under oath.
 4 ALBERT JAMIESON: [s.u.o.]
 5 CROSS-EXAMINATION BY MR NGCUKAITOBI (CONTD.):
 6 Thank you, Chairperson. Mr Jamieson, we left matters
 7 yesterday on exhibit XX2.9. Have you got the exhibit?
 8 MR JAMIESON: Yes, Mr Chairman, is there
 9 something I can say before we start, please?
 10 CHAIRPERSON: Well, I strictly speaking
 11 should ask what it is, but yes, say it.
 12 MR JAMIESON: The homework I was given to
 13 read last night, in there was a statement by Mr Mokwena
 14 which I haven't read before and it differs from the one
 15 that was put up yesterday and I was asked questions on.
 16 CHAIRPERSON: [Microphone off, inaudible]
 17 something about it?
 18 MR JAMIESON: Only that.
 19 CHAIRPERSON: You read it now?
 20 MR JAMIESON: Yes.
 21 CHAIRPERSON: Was there anything that you
 22 wish to say by way of amplification or qualification
 23 relating to that statement that you've now read?
 24 MR JAMIESON: Yes, it concerns the
 25 decision not to talk to the strikers on the 10th of

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1 September and it's around how that decision was made.
 2 CHAIRPERSON: Well, tell us what you want
 3 to say about it.
 4 MR JAMIESON: Well, what I – I can only
 5 tell you what I read. Mr Mokwena's version –
 6 CHAIRPERSON: Well, we've also read it.
 7 MR JAMIESON: Okay. That's fine.
 8 CHAIRPERSON: And I saw it, I realised
 9 that too, I also saw the difference.
 10 MR JAMIESON: Yes.
 11 CHAIRPERSON: But the fact is it was put
 12 to you, certain evidence was put to you and you agreed with
 13 it, so I'm not sure that the fact that that statement says
 14 something different from the one that was put to you
 15 earlier necessarily affects your evidence, but anyway, but
 16 you wish to comment on the accuracy? I don't want to
 17 muzzle you or censor in advance what you want to say.
 18 We're here to get the truth, not to catch people out or
 19 take advantage of mistakes that were made, if they were
 20 made.
 21 MR JAMIESON: What struck me is the
 22 supplementary statement better suits, better or more
 23 accurately describes perhaps how the decision was made than
 24 the former one, and it suits the circumstances. That's
 25 all.

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1 CHAIRPERSON: The other way of looking at
 2 it is that the former one as made earlier when matters were
 3 fresher in the memory of the deponent.
 4 MR JAMIESON: Sure.
 5 CHAIRPERSON: But that was put to you and
 6 you agreed with it.
 7 MR JAMIESON: Yes.
 8 CHAIRPERSON: You didn't say that's not
 9 the way I remember it, so I don't know that that's
 10 necessarily a good point, but I don't want to – as I say I
 11 don't want to express a view at this stage because
 12 obviously I must listen to all the evidence and the
 13 argument. But if you want to say something more you can.
 14 I'm not going to stop you.
 15 MR JAMIESON: Okay, well –
 16 CHAIRPERSON: But also if I may be
 17 permitted so to say, words like "perhaps" don't always help
 18 very much, do they?
 19 MR JAMIESON: If I give the, some of the
 20 context it perhaps helps to illustrate I think better what
 21 that was, so –
 22 CHAIRPERSON: As I've said, you can go
 23 ahead, ja.
 24 MR JAMIESON: Yes, thanks. The
 25 conversation in, on the 10th of, on the 10th of August was

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1 in my office and it was on speaker phone and I basically
 2 bumped into Barnard Mokwena on the way in to the office and
 3 he said "Can we go to your office and put this on speaker
 4 phone so you can listen in?" Clearly I wanted to listen
 5 in, it was an important matter, and also from my point of
 6 view if there was a unprotected strike in progress that
 7 would probably be a disclosable event if it gets announced,
 8 customers would phone in and so I'd have to be aware of it
 9 because it's got an implication on delivery. That was
 10 really the source of it. But that's not detracting from
 11 the fact that it was an important issue in any event.
 12 On the other end of the phone when Barnard
 13 dialled up was to my recollection Abey and Frank and it was
 14 a very fast-flowing conversation and during that
 15 conversation the words we used were well, we're not going
 16 to talk to the strikers, are we; no, we're not going to
 17 talk to them. Now I –
 18 CHAIRPERSON: Isn't that a decision in
 19 anybody's language?
 20 MR JAMIESON: That's what I was coming
 21 to. But it's a question of whether it's a decision that
 22 was made on the phone on that call. What the other one
 23 seems to, what the other version seems to say is that it
 24 was a prior call, there was discussion around it on a lot
 25 of factors and the decision was then made.

<p style="text-align: right;">Page 37594</p> <p>1 CHAIRPERSON: So the trouble –</p> <p>2 MR JAMIESON: You know, I just wanted to</p> <p>3 mentioned that –</p> <p>4 CHAIRPERSON: I don't want to debate with</p> <p>5 you too much on this at this stage.</p> <p>6 MR JAMIESON: Sure.</p> <p>7 CHAIRPERSON: But my reaction to that</p> <p>8 prima facie for what it's worth is it may have been a hasty</p> <p>9 decision, but it was a – there are two points about it.</p> <p>10 One, it was a decision, and secondly it was persisted in.</p> <p>11 MR JAMIESON: Yes.</p> <p>12 CHAIRPERSON: And as I said to you</p> <p>13 yesterday it was nyet, nyet, nyet. It wasn't just nyet and</p> <p>14 then followed by the –</p> <p>15 MR JAMIESON: Correct.</p> <p>16 CHAIRPERSON: - the Russian for no after</p> <p>17 a time for deliberation.</p> <p>18 MR JAMIESON: Yes.</p> <p>19 CHAIRPERSON: Isn't that so?</p> <p>20 MR JAMIESON: And I'm not saying I didn't</p> <p>21 support it.</p> <p>22 CHAIRPERSON: Ja, no, no –</p> <p>23 MR JAMIESON: I certainly did which is –</p> <p>24 CHAIRPERSON: Ja, but you participated –</p> <p>25 MR JAMIESON: - when it was made and –</p>	<p style="text-align: right;">Page 37596</p> <p>1 anyway, let's put it on the screen and see.</p> <p>2 MR NGCUKAITOBI: Yes. It's KK at page</p> <p>3 12.</p> <p>4 CHAIRPERSON: KK, you've got to give the</p> <p>5 number.</p> <p>6 MR NGCUKAITOBI: KK.</p> <p>7 CHAIRPERSON: Just KK?</p> <p>8 MR NGCUKAITOBI: Yes.</p> <p>9 CHAIRPERSON: No number? Early days we</p> <p>10 didn't realise what a sort of flood of exhibits we'd get.</p> <p>11 MR NGCUKAITOBI: It's a bundle of</p> <p>12 statements.</p> <p>13 CHAIRPERSON: Page 12?</p> <p>14 MR NGCUKAITOBI: Page 12, Mr Chairman.</p> <p>15 CHAIRPERSON: Page or para?</p> <p>16 MR NGCUKAITOBI: No, paragraph 4.5 of the</p> <p>17 statement by Mr Mokwena.</p> <p>18 CHAIRPERSON: Paragraph 4.5, alright,</p> <p>19 let's go back. 4.5? There isn't a 4.5. You also have in</p> <p>20 that particular part, that talks about the 11th of August</p> <p>21 anyway. Perhaps it's a bit earlier; as far as the</p> <p>22 narration is concerned this bit would relate to something</p> <p>23 said on the 10th, so perhaps it's earlier on, earlier in</p> <p>24 paragraph 3. Let's have a look at the beginning, please.</p> <p>25 MR JAMIESON: This is Mr Kwadi's</p>
<p style="text-align: right;">Page 37595</p> <p>1 CHAIRPERSON: - you participated in</p> <p>2 making it really, didn't you? I mean either by your</p> <p>3 silence or by even possibly saying something.</p> <p>4 MR JAMIESON: Yes, agreed.</p> <p>5 CHAIRPERSON: Adding your own nyet to the</p> <p>6 discussion.</p> <p>7 MR JAMIESON: Yes.</p> <p>8 CHAIRPERSON: Ja, alright.</p> <p>9 MR NGCUKAITOBI: Thank you, Mr Chairman.</p> <p>10 I don't know whether this is the –</p> <p>11 CHAIRPERSON: Sorry, you were</p> <p>12 interrupted, but it was I think a valuable exchange, if I</p> <p>13 may say so. Anyway, carry on with your cross-examination.</p> <p>14 MR NGCUKAITOBI: Yes, thank you, Mr</p> <p>15 Chairman. I wonder whether this is the time I should be</p> <p>16 putting the, I mean what Mr – KK, Mr Mokwena's original</p> <p>17 statement at paragraph 4.5 on this very point, page 12 –</p> <p>18 CHAIRPERSON: That was put previously,</p> <p>19 but put it again if you consider it necessary. The witness</p> <p>20 is –</p> <p>21 MR NGCUKAITOBI: Yes, I was going to ask</p> <p>22 the question whether or not the narration here is accurate</p> <p>23 or inaccurate.</p> <p>24 CHAIRPERSON: I thought he was asked that</p> <p>25 before and he said yes. Now he's got second thoughts. But</p>	<p style="text-align: right;">Page 37597</p> <p>1 statement.</p> <p>2 CHAIRPERSON: Oh, this is the wrong</p> <p>3 statement. This is Mr Kwadi's statement. No wonder we</p> <p>4 can't find it.</p> <p>5 MR NGCUKAITOBI: Yes, but I'm looking for</p> <p>6 Mr –</p> <p>7 CHAIRPERSON: Well, then give us the</p> <p>8 right reference then we'll have it on the screen.</p> <p>9 MR NGCUKAITOBI: - Mr Mokwena's</p> <p>10 statement.</p> <p>11 CHAIRPERSON: When in doubt ask Ms</p> <p>12 Pillay. Ms Pillay?</p> <p>13 MS PILLAY: Chair, it's OO15.</p> <p>14 MR NGCUKAITOBI: OO15.</p> <p>15 CHAIRPERSON: OO15, what some people</p> <p>16 erroneously call OO15. It's actually OO15.</p> <p>17 MR NGCUKAITOBI: Yes, thank you. Thank</p> <p>18 you, and the page is 11, the paragraph is 4.5. That's the</p> <p>19 paragraph, Mr Jamieson.</p> <p>20 MR JAMIESON: Correct.</p> <p>21 MR NGCUKAITOBI: Yes, now –</p> <p>22 CHAIRPERSON: That's the paragraph that</p> <p>23 was put to him by Mr Mpofu.</p> <p>24 MR NGCUKAITOBI: Yes.</p> <p>25 CHAIRPERSON: And he agreed with it. He</p>

<p style="text-align: right;">Page 37598</p> <p>1 now says he's read the other statement and he says perhaps 2 what he said was wrong. That's the exchange he had with 3 me. 4 MR NGCUKAITOBI: Yes. Now is the point 5 that you're making that – 6 CHAIRPERSON: But it doesn't really 7 matter, does it? I mean if as he now says he agrees with 8 it, he sat there, it may have been fast and furious things 9 being said over the speaker phone, but he doesn't deny that 10 he was in a sense a party to it, he's just explaining the 11 background and the context of it. Am I right, Mr Jamieson? 12 MR JAMIESON: Correct. 13 CHAIRPERSON: Ja. Anyway, you know, if 14 you think it's important you must carry on, but don't waste 15 too much time on what looks like a peripheral red herring. 16 MR NGCUKAITOBI: Yes. Well, the only 17 point, Mr Chairman, is to compare that statement with the 18 later statement about exactly who took the decision. Mr 19 Mokwena originally tells us that the decision was taken by 20 you and him. 21 MR JAMIESON: I know. What was put to me 22 yesterday was that the "we" on that decision included the 23 people on the call at the mine – 24 MR NGCUKAITOBI: Yes. 25 MR JAMIESON: - so that it was a joint</p>	<p style="text-align: right;">Page 37600</p> <p>1 MR JAMIESON: Yes. 2 CHAIRPERSON: - made the first time then. 3 MR JAMIESON: Correct. 4 CHAIRPERSON: I would have thought that 5 from a legal point of view, a responsibility point of view 6 it's a distinction without a difference, but it's a 7 distinction all the same and it's now on record. So – 8 MR NGCUKAITOBI: But you would admit that 9 you were party to the later decision? 10 MR JAMIESON: I, in fact I was – 11 CHAIRPERSON: But he said that. 12 MR JAMIESON: I mean I was supportive of 13 this decision. 14 MR NGCUKAITOBI: Yes, thank you. Now can 15 I go back then to where I wanted to start, which I annexure 16 XX2.9, or exhibit XX2.9. 17 MR JAMIESON: I have a bundle without any 18 index, I'm afraid, so – 19 MR NGCUKAITOBI: Okay, it's going to be 20 shown up on the screen. 21 MR JAMIESON: Okay. 22 MR NGCUKAITOBI: It's the substantive 23 agreement. Have you got that? 24 MR JAMIESON: Yes. 25 MR NGCUKAITOBI: Thank you. Now this is</p>
<p style="text-align: right;">Page 37599</p> <p>1 decision with the people who were on the call and the two 2 who was in the office. 3 MR NGCUKAITOBI: And what is your version 4 now, who took the decision? 5 MR JAMIESON: Well, I'm, I've read, it's 6 not whether it's mine or not, I've read the supplementary 7 statement which says that there was a decision taken 8 beforehand by, on a different call with another group of 9 people and Barnard takes accountability for that discussion 10 himself, as – 11 MR NGCUKAITOBI: What is your version 12 today, who took the decision? 13 MR JAMIESON: Well, I don't know because 14 I didn't know about the previous call. 15 MR NGCUKAITOBI: Yes. 16 MR JAMIESON: So in the context of this I 17 have to say I participated in a discussion that took a 18 decision in the midst of the discussion, but I wasn't aware 19 of what had happened earlier, so I can't say anything 20 different. 21 CHAIRPERSON: It sounds from what you say 22 that you didn't know about the previous decision, so you 23 didn't know that you were in effect ratifying or continuing 24 an earlier decision. You thought you were part of a new 25 decision –</p>	<p style="text-align: right;">Page 37601</p> <p>1 a agreement where yesterday you said you were afraid that 2 you might fall in breach if you spoke to the union, if you 3 spoke rather to the RDOs. Remember that? 4 MR JAMIESON: Please just remind me. 5 MR NGCUKAITOBI: Now the agreement on the 6 cover page is between NUM and Lonmin. You see that? 7 MR JAMIESON: Yes. 8 MR NGCUKAITOBI: And clause 2 deals with 9 the application, it makes it clear that it applies in 10 respect of NUM and its members and then non-unionised 11 employees. You see that? 12 MR JAMIESON: 2.1, 2.1.1 and 2.1.2? 13 MR NGCUKAITOBI: Yes. 14 MR JAMIESON: Ja, the query that I would 15 have there is I don't understand what the bargaining unit 16 is. I couldn't find anywhere in here where it was defined. 17 MR NGCUKAITOBI: Yes. Now, and then its 18 substantive provisions deal with wages at paragraph 3 – 19 MR JAMIESON: Wages at paragraph 3, yes. 20 MR NGCUKAITOBI: And they cover the 21 period 2011 and 2012. 22 MR JAMIESON: Yes. 23 MR NGCUKAITOBI: And then there's housing 24 allowance and the rest of the substantive clauses which I 25 don't want to spend your time on it. I want to take you to</p>

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1 paragraph 12. Can you see that?

2 MR JAMIESON: Yes, full and final

3 settlement?

4 MR NGCUKAITOBI: Yes, and then paragraph

5 12.4.

6 MR JAMIESON: Yes.

7 MR NGCUKAITOBI: It says, "No addition or

8 variation, consensual cancellation or novation to the

9 agreement or any right arising from it or breach or

10 termination shall be of any force or effect unless reduced

11 to writing and signed by all the parties or their duly

12 authorised representative."

13 MR JAMIESON: Yes.

14 MR NGCUKAITOBI: You see that? In other

15 words this agreement can be changed or altered if Lonmin

16 and NUM agree, because Lonmin and NUM are the only parties

17 to the agreement.

18 CHAIRPERSON: It's obviously right, isn't

19 it? We had this issue out long, long ago, when the debate

20 turned on 12.3 and consensus at that stage was the

21 following, that there's nothing to stop the parties

22 negotiating before the cut-off date of the 30th of September

23 2013, and in fact instances were cited, not necessarily

24 involving Lonmin, but where similar agreements had been

25 made where there's a dramatic change of circumstances –

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1 inflation rate went up dramatically was the example given.

2 There was an inflation-based increase in the agreement.

3 MR JAMIESON: Market adjustment.

4 CHAIRPERSON: That's right, and Mr

5 Zokwana, the president of NUM, said no problem, we can

6 negotiate despite the fact that there's this two-year

7 agreement. Obviously we can't strike because 12.3 says we

8 can't strike, but we can negotiate and in fact we have in

9 past succeeded in persuading employers that the

10 circumstances have changed so significantly that an

11 increase is justified. So, and 12.4 actually reinforces

12 that. It doesn't say you can't negotiate. What it says is

13 if you do negotiate you've got to make sure that the result

14 of your negotiation is, if an alteration is agreed to is in

15 writing. That's all 12.4 says. But 12.3 says that you

16 can't, during this period of two years you can't have a

17 strike. That's all it says. Isn't that right?

18 MR JAMIESON: Are you asking me?

19 CHAIRPERSON: Yes.

20 MR JAMIESON: I'm not sure because when I

21 read it last night I got a series of questions which I

22 don't understand. So –

23 CHAIRPERSON: Well, alright.

24 MR JAMIESON: - I would, and not being

25 able to talk to my legal team or anyone else I haven't got

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1 an answer to those.

2 CHAIRPERSON: Anyway –

3 MR JAMIESON: I can tell you what the

4 questions are, if you want.

5 CHAIRPERSON: Well, if you don't know

6 this point, but the point being put to you by counsel is

7 there was nothing stopping negotiation during the period.

8 What I put to you is that was agreed long ago when the NUM

9 witnesses were giving evidence. The NUM people took the

10 rather unfortunate stand, the local people at Lonmin,

11 Marikana, they told their workers nothing we can do, the

12 two-year agreement stands, don't do anything, we'll wait

13 until September 2013. That was wrong and Mr Zokwana when

14 he came agreed with that. He said, you know, it was

15 unfortunate that that stance had been taken down at the

16 mine level because that wasn't correct, but that point's

17 covered by all that evidence. The point now being made to

18 you is there was nothing stopping negotiation, but in terms

19 of the agreement all that couldn't happen was a strike if

20 the negotiations failed to reach an agreement.

21 MR JAMIESON: I understand.

22 CHAIRPERSON: That must be right.

23 MR JAMIESON: Yes, clear –

24 CHAIRPERSON: Now I don't know how

25 relevant your questions are in the light of that point, but

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1 I'm sure if you ask your attorneys to set out the questions

2 in a brief and send it to counsel they will give you a

3 written reply and mark the brief accordingly.

4 MR JAMIESON: Okay.

5 MR NGCUKAITOBI: Thank you, Mr Chairman.

6 Now Mr Jamieson, we also know from the statement of Mr Da

7 Costa that when management decided to offer an allowance

8 instead of as a response to the demand by the workers,

9 NUM's view was not opposed to the allowance being paid.

10 You remember that?

11 MR JAMIESON: Only through reading Mr Da

12 Costa's statement and hearing the evidence here after the

13 fact.

14 MR NGCUKAITOBI: Yes, you were not aware

15 that NUM at that stage in July 2012 was not opposed to the

16 allowance being paid?

17 MR JAMIESON: No, I wasn't aware.

18 MR NGCUKAITOBI: Now there was nothing

19 stopping Lonmin from presenting the proposal by the RDOs at

20 the bargaining forum?

21 MR JAMIESON: Wasn't there?

22 MR NGCUKAITOBI: I'm asking you.

23 MR JAMIESON: I'd have, in terms of

24 reading this –

25 MR NGCUKAITOBI: No, from what you knew

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1 at the time.

2 MR JAMIESON: I didn't know at the time.

3 I've only read this last night.

4 MR NGCUKAITOBI: Yes, alright, and in

5 terms of reading that?

6 CHAIRPERSON: It doesn't matter what he

7 read last night. Were you involved in wage negotiations of

8 any kind?

9 MR JAMIESON: No.

10 CHAIRPERSON: Were you involved in the

11 bargaining forum?

12 MR JAMIESON: No.

13 CHAIRPERSON: Can you give us any – and I

14 say this without disrespect or intending to insult you.

15 Can you give us any meaningful information that will help

16 us to answer the questions the President has asked us to

17 answer in relation to wage negotiations, bargaining units,

18 and so forth, of Lonmin?

19 MR JAMIESON: I doubt it very much.

20 CHAIRPERSON: Okay.

21 MR NGCUKAITOBI: Alright, thank you. Now

22 let's move on to the next issue. You were asked yesterday

23 about why you were keen to get the police involved.

24 MR JAMIESON: Yes.

25 MR NGCUKAITOBI: You mentioned, you used

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1 the metaphor of a double-headed hydro. You remember that?

2 MR JAMIESON: Yes.

3 MR NGCUKAITOBI: What did you want the

4 police to do?

5 MR JAMIESON: What we wanted the police

6 to do was to come on site, restore law and order, stop the

7 murders and stop the violence.

8 MR NGCUKAITOBI: Yes, now on your

9 metaphor of a double-headed hydro you had one, the labour

10 problem, and the second one that you had was the crime

11 problem.

12 MR JAMIESON: Yes.

13 MR NGCUKAITOBI: So clearly you wanted

14 the police to help you with the crime problem.

15 MR JAMIESON: Not help us, no. I wanted

16 the police to solve the problem.

17 MR NGCUKAITOBI: You wanted the police to

18 arrest the people who were involved in crime?

19 MR JAMIESON: That would probably be part

20 of it, but it was just a, you know, create law and order on

21 the mine.

22 MR NGCUKAITOBI: Yes, did you want the

23 police to get involved in negotiation concerning the return

24 of the workers to work?

25 MR JAMIESON: It wasn't something that I

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1 was asked by my colleagues to handle. It was something

2 that was also being handled and I understand, you know,

3 from the conversations we've subsequently seen was being

4 handled by the guys at the mine. So that was Mark, that

5 was Barnard, Natasha, Jomo, Abey, those were the people

6 involved in that. What I was asked to do, and I think

7 you've seen it before, was try and escalate the issue of

8 the crime situation because there was a slow response from

9 SAPS at the mine. The guys were concerned that there

10 wasn't enough police coming to site quickly enough and

11 could I find a way to reach out to the DMR, who is our

12 regulator, and would be concerned about safety issues on

13 the mine to help.

14 MR NGCUKAITOBI: I'm asking you a

15 different question. Did Lonmin want the police to get

16 involved in negotiating a return to work by the workers?

17 MR JAMIESON: When you say Lonmin –

18 MR NGCUKAITOBI: Yes, the company.

19 MR JAMIESON: Who in Lonmin?

20 MR NGCUKAITOBI: Well –

21 MR JAMIESON: Who in Lonmin?

22 MR NGCUKAITOBI: Was it the position of

23 Lonmin that the police should be involved in negotiating a

24 return to work and an end to the strike?

25 MR JAMIESON: I can't speak to that

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1 because I wasn't involved in those discussions.

2 MR NGCUKAITOBI: But as far as you were

3 concerned the role of the police was limited to dealing

4 with the criminal aspect?

5 MR JAMIESON: Yes.

6 MR NGCUKAITOBI: Now would you agree with

7 me that it would have been wrong for the police to get

8 involved in the negotiations pertaining to the end of the

9 strike?

10 MR JAMIESON: Yes.

11 MR NGCUKAITOBI: Yes, and that's probably

12 why you personally were not keen to get the police to be

13 involved in that aspect of the dispute?

14 MR JAMIESON: I didn't express any

15 opinion on whether I thought they should get involved or

16 not. I was never asked.

17 MR NGCUKAITOBI: Yes.

18 [09:32] Now, I want to refer you to certain statements

19 that have been made by Mr Annandale, Mr Naidoo and certain

20 other officials, or make it clear that they understood

21 their brief as ending the strike. Were you aware of that?

22 MR JAMIESON: No.

23 MR NGCUKAITOBI SC: Not aware, no I'm not

24 aware of that.

25 CHAIRPERSON: I'd like to hear those

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1 references. I don't remember it being put quite as crisply
 2 as that. I remember what the Provincial Commissioner said
 3 in her press conference, which she says was a slip of the
 4 tongue, but I'm not sure that the quotation you put, you
 5 summarised, is correct but I may find that you're right and
 6 I'm wrong. It would be helpful if you gave us those
 7 passages.

8 MR NGCUKAITOBI SC: Yes. Well, let's put
 9 up exhibit GGG1 which was the statement by General
 10 Annandale.

11 CHAIRPERSON: What paragraph do you want
 12 us to look at?

13 MR NGCUKAITOBI SC: Paragraph 8, Mr
 14 Chairman.

15 CHAIRPERSON: Thank you.

16 MR NGCUKAITOBI SC: Towards the seventh
 17 line from the bottom, let's look at the first line. This
 18 is General Annandale narrating what the negotiators were
 19 tasked to do. He says, "The negotiators were tasked to
 20 encourage the protesters to return to their working
 21 stations, whereafter mine management would engage in
 22 negotiations about the labour related matters." Now I want
 23 to ask you about the –

24 CHAIRPERSON: Perhaps if you read the
 25 next sentence as well.

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1 MR NGCUKAITOBI SC: "It was made clear
 2 that the hostage negotiators would not negotiate on behalf
 3 of Lonmin mine as the employer. The negotiations were to
 4 be conducted from a Nyala armoured vehicle using a public
 5 relations system. They had to use the services of an
 6 interpreter in Fanagolo." Now I want to ask you about that
 7 first line which says, "The negotiators were tasked to
 8 encourage the protesters to return to their working
 9 stations," was that part of your understanding that that's
 10 what the police were meant to do?

11 MR JAMIESON: No.

12 MR NGCUKAITOBI SC: Now, the same issue
 13 appears in the statement by Mr McIntosh, which is HHH14,
 14 HHH14.

15 CHAIRPERSON: Paragraph?

16 MR NGCUKAITOBI SC: Paragraph 14, Mr
 17 Chairman. Now Mr McIntosh is narrating what transpired on
 18 the scene on the day of the negotiations.

19 CHAIRPERSON: I take it you want to start
 20 in the middle where he says, Mr Noki having said he wants
 21 to talk to management –

22 MR NGCUKAITOBI SC: Yes.

23 CHAIRPERSON: Lieutenant-Colonel McIntosh
 24 says, "We informed them that the mine management doesn't
 25 want to talk to them before they put down their weapons and

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1 return to work. We also informed them that the mine
 2 stated" –

3 MR NGCUKAITOBI SC: Yes.

4 CHAIRPERSON: - "that there's a two-year
 5 wage agreement in place with all the unions and that the
 6 strike is unprotected but that the mine will talk to the
 7 unions again when the workers lay down their weapons and
 8 return to normal duties. This agitated the person in the
 9 green blanket." That's the passage you rely on?

10 MR NGCUKAITOBI SC: Yes indeed, Mr
 11 Chairman.

12 CHAIRPERSON: Now before you carry on, I
 13 think in fairness to the witness who was in Melrose Arch at
 14 the time all these things were happening, we had a lot of
 15 evidence on this and the police witnesses, as I understand
 16 it, emphasised that they were, as it were, wearing two hats
 17 when they were talking in this way. They were wearing
 18 negotiating hats – this isn't the two hats and two heads
 19 and so on – but this is a rather unhappy metaphor but this
 20 is the metaphor used, they were wearing two hats, the one
 21 was a negotiating hat. The role they were performing
 22 wearing that hat was to bring the state of law, to restore
 23 law and order, bring an end to the violence and the
 24 possession of the dangerous weapons and that kind of thing.
 25 The second hat related to another role, what we lawyers

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1 would call a nuntius role, you know, a nuntius is a
 2 messenger, a bearer of communication from one side to the
 3 other. And this passage makes it clear, they were
 4 negotiating – well, this particular part doesn't make it
 5 clear but they were negotiating to try to restore law and
 6 order. They were also acting as nuntii, carrying
 7 information from the mine, the employer to the strikers,
 8 saying what the mine management's attitude was because
 9 obviously the strikers wanted to know what mine management
 10 were saying and this is all that passage says, but anyway I
 11 don't see how it helps to ask this witness something. You
 12 know we've had witnesses here before whose answer is andiaz
 13 and sometimes they may be criticised because perhaps they
 14 do know but if this witness says andiaz, whether he says it
 15 in English or in Xhosa the answer will probably be a
 16 truthful one.

17 MR NGCUKAITOBI SC: Yes. Can you, I just
 18 want to ask one question about that passage. I mean that
 19 passage that was read to you by the Chairman, was that your
 20 understanding of the role of the police or was it contrary
 21 to your understanding?

22 MR JAMIESON: I didn't have really any
 23 understanding of what the police role was.

24 MR NGCUKAITOBI SC: I want to refer –

25 MR JAMIESON: Other than to restore the

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1 law and order, definitely. This one I wasn't aware of.
 2 MR NGCUKAITOBI SC: Alright. I want to
 3 refer you to statements made by Lonmin itself about the
 4 role of the police. The first is a statement by Mr Kwadi
 5 which is, again I have it as – which is in KK, yes, and
 6 particularly at paragraph 9.5. Thank you. Now what he is
 7 explaining there is the activities at the JOC and then he
 8 says when he was there he received a telephone call from Mr
 9 Mathunjwa. "He informed me," that is Mr Mathunjwa informed
 10 Mr Kwadi, "that he wanted to go to the koppie and requested
 11 that management should organise a meeting with SAPS in
 12 order that he be granted permission to go to the koppie."
 13 And then he says, this is Mr Kwadi, "I advised him (Mr
 14 Mathunjwa) that the area had been declared as a police area
 15 and that it was no longer in management control. I also
 16 informed him that management had expressly advised no-one
 17 would to go the koppie" –
 18 CHAIRPERSON: "Would be allowed to go to
 19 the koppie." But were you a member of management in the
 20 sense that that expression is used in this paragraph? You
 21 were at Melrose Arch, weren't you?
 22 MR JAMIESON: Yes, and when I read this
 23 last night I actually, my understanding was that it was a
 24 police controlled area from Monday. So when, I think this,
 25 if I'm correct, was this Thursday? Was this –

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1 CHAIRPERSON: Yes, this was –
 2 MR JAMIESON: Or the 15th.
 3 CHAIRPERSON: This was the 16th, I think,
 4 the Thursday, ja.
 5 MR JAMIESON: So my understanding,
 6 sitting Melrose Arch, was actually it was a police area
 7 from Monday. That's why on the issue of management –
 8 CHAIRPERSON: I don't think that's right
 9 but the police certainly were in control or thought they
 10 were in control or endeavouring to exercise control on the
 11 Thursday.
 12 MR JAMIESON: Ja, and from the point of
 13 view of management, no, that's not me. I think it refers
 14 to the people who were on the mine at the JOC.
 15 CHAIRPERSON: One of the problems the
 16 Bishop had was he couldn't, he wanted to go back to the
 17 koppie to speak again to the strikers and he was told he
 18 couldn't go because the police wouldn't let him, so the
 19 police were purporting to exercise control, I think. Yes,
 20 sir?
 21 MR NGCUKAITOBI SC: Thank you.
 22 CHAIRPERSON: Is this question going to
 23 help us?
 24 MR NGCUKAITOBI SC: Yes, well –
 25 CHAIRPERSON: I can understand if he was

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1 one of the management who had given that express advice,
 2 then the question would have some future but if he wasn't,
 3 he was in Melrose Arch, then I don't think it helps us
 4 really.
 5 MR NGCUKAITOBI SC: Yes, I want to go
 6 then to the statement of Mr Seedat. I'll come to the
 7 presence of Mr Jamieson at the JOC on the day. The last
 8 statement is KK at paragraph 5.3, which is Mr Seedat's
 9 statement. Seedat, it's also KK –
 10 CHAIRPERSON: KK is Mr Kwadi's statement.
 11 Which paragraph do you want now?
 12 MS PILLAY: Chair, Mr Seedat's statement
 13 is OO14.
 14 CHAIRPERSON: OO?
 15 MR NGCUKAITOBI SC: OO14, Mr Chairman.
 16 CHAIRPERSON: OO14?
 17 MR NGCUKAITOBI SC: Yes, at paragraph
 18 5.3. Now this is a recollection of what they were informed
 19 by General Annandale. "General Annandale informed us that
 20 the SAPS wanted to avoid loss of life and that the crowd
 21 appeared to be well-organised. One of the members of the
 22 team, I cannot recall, asked General Annandale how the SAPS
 23 intended to deal with the situation. General Annandale
 24 told us that SAPS, that this was an operational matter and
 25 that they could not talk to us about it." Do you remember

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1 that?
 2 MR JAMIESON: I wasn't given –
 3 MR BURGER SC: I don't know what the
 4 question is, with respect, Chair. We've now had statement
 5 upon statement read from witnesses and this witness is
 6 unable to help us on that, so whether he's aware of this is
 7 not going to advance –
 8 MR NGCUKAITOBI SC: Yes, well –
 9 CHAIRPERSON: Some cross-examiners have
 10 different styles from others, some put statements and then
 11 bring them all together and I don't think we can stop him
 12 but –
 13 MR NGCUKAITOBI SC: Yes.
 14 CHAIRPERSON: The real question I'd like
 15 to ask is this, where were you on the 16th?
 16 MR NGCUKAITOBI SC: Thank you.
 17 CHAIRPERSON: Mr Jamieson, where were
 18 you?
 19 MR JAMIESON: I drove from home, picked
 20 up Roger Phillimore and then drove out to the mine.
 21 CHAIRPERSON: So you were at the mine?
 22 MR JAMIESON: Yes, so we –
 23 CHAIRPERSON: What time did you get
 24 there?
 25 MR JAMIESON: - LPD.

<p style="text-align: right;">Page 37618</p> <p>1 CHAIRPERSON: What time did you get 2 there? 3 MR JAMIESON: Does it say in my 4 statement? 5 CHAIRPERSON: No, I'm not asking if it's 6 in your statement. What time? 7 MR JAMIESON: Round about 10, half past 8 10. 9 CHAIRPERSON: Half past 10, alright. You 10 went to LPD? 11 MR JAMIESON: Yes. 12 CHAIRPERSON: Were you at the JOC at all? 13 MR JAMIESON: Yes, we went to visit the 14 JOC round about lunch time. 15 CHAIRPERSON: How long were you at the 16 JOC? 17 MR JAMIESON: Maybe about an hour. 18 CHAIRPERSON: An hour. Now, this passage 19 here that's been put to you – 20 MR JAMIESON: Yes. 21 CHAIRPERSON: - about what General 22 Annandale told "us." 23 MR JAMIESON: Right. 24 CHAIRPERSON: That's Mr Seedat and 25 others, that the SAPS wanted to avoid a loss of life –</p>	<p style="text-align: right;">Page 37620</p> <p>1 before half past one? 2 MR JAMIESON: It was around lunch time 3 that we were there. 4 CHAIRPERSON: Was it before half past 5 one? 6 MR JAMIESON: Possibly. 7 CHAIRPERSON: You see, if it was before 8 half past one the evidence indicates that General Annandale 9 wouldn't have known how they intended to deal with the 10 situation because that was only going to be told to them by 11 Colonel Scott later on, but we don't have to go there now. 12 MR JAMIESON: Yes, so my answer to that 13 was no, I wasn't one of the "us" in that but I was one of 14 the "us" if it was said by General Mbombo. 15 CHAIRPERSON: The answer is you were told 16 something along those lines by General Mbombo. 17 MR JAMIESON: Mbombo. 18 CHAIRPERSON: You and a party, a number 19 of others – 20 MR JAMIESON: Yes, yes. 21 CHAIRPERSON: - who were with you. 22 MR JAMIESON: Yes. 23 CHAIRPERSON: I think that lays the 24 ground for your next question. 25 MR NGCUKAITOBI SC: Yes. Now paragraph</p>
<p style="text-align: right;">Page 37619</p> <p>1 MR JAMIESON: Yes. 2 CHAIRPERSON: Unfortunately they weren't 3 able to do that. The crowd appeared to be very well- 4 organised and when one of the members of the team, the 5 deponent can't remember, Mr Seedat can't remember who it 6 was, "asked General Annandale how the SAPS intended to deal 7 with the situation and General Annandale told us this was 8 an SAPS operational matter which they couldn't talk to us 9 about." Were you one of the people who are covered by the 10 word "us?" Were you present when that conversation with 11 General Annandale took place? 12 MR JAMIESON: When - I think what this is 13 referring to, I didn't get Mr Seedat's statement to read 14 last night in my homework so this is the first time I've 15 seen this. I think what it's referring to is, we went into 16 the JOC, we got introduced to various police officials and 17 what have you and then various conversations about 18 different parts of, you know, what was there, there were 19 legal people there, there were negotiators there that they 20 pointed out, there was intelligence people there and 21 different conversations occurred at different times within 22 the groups of people. I can't specifically remember that 23 but I can remember when we went outside with General Mbombo 24 she said something similar basically. 25 CHAIRPERSON: Now what time, was that</p>	<p style="text-align: right;">Page 37621</p> <p>1 5.4 in that same statement and there he says, "Thereafter 2 the SAPS Provincial Chief Commissioner, General Mbombo, who 3 had just arrived by helicopter, addressed us." Now 4 presumably you were there. "She said to us that SAPS' 5 first priority was to disarm the crowd in a manner which 6 would avoid casualties and with public security at the 7 forefront. She told us that SAPS had developed a tactical 8 disarmament plan. With reference to the crowd she said, 9 'If you give them a hand they want the arm until you have 10 no more to give' or words to that effect." You were 11 clearly there when this statement was made – 12 CHAIRPERSON: I'd like to read the next 13 sentence too. "General Mbombo did not share with us any 14 detail of the manner in which SAPS would deal with the 15 situation on the day," and if she'd just arrived by 16 helicopter it was before the half past one meeting and on 17 her own evidence she didn't know how they were going to 18 deal with it, but anyway is this, was this said to you? 19 The passage that we're now looking at, does this relate to 20 something General Mbombo said when you were present? 21 MR JAMIESON: Yes, it does. This was 22 outside the JOC. There's a little sort of thatched lapa 23 that is there and we walked out from there and she was 24 talking to a group of people under there. I didn't quite 25 know what it meant but I was there when she said it.</p>

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1 MR NGCUKAITOBI SC: Yes. Now when she
2 says, "If you give them a hand they want the arm, until you
3 have no more to give," she was clearly referring to the
4 strikers, wasn't she?
5 MR JAMIESON: I don't know.
6 MR NGCUKAITOBI SC: Yes. Now it seems
7 the understanding of SAPS was that their role, in part, was
8 to end the strike. The understanding of Mr Kwadi and the
9 understanding of Mr Seedat was also that the role of SAPS
10 was to end the strike and you seem to be the only one who
11 has a different understanding. Can you explain why that is
12 so?
13 MR JAMIESON: Well, I wouldn't say I was
14 the only one. I was, anyone who wasn't there in those
15 conversations and present and party to them would also not
16 understand. There was, I think, quite a few people apart
17 from me who wasn't there, so I don't think Simon Scott
18 would say he understood that, I don't think Roger
19 Phillimore would say he understanding that, we weren't
20 there.
21 MR NGCUKAITOBI SC: Well, as I understand
22 Mr Phillimore was actually at the briefing with Ms Mbombo
23 on the 16th.
24 MR JAMIESON: Well, if it was this same –
25 MR NGCUKAITOBI SC: Yes.

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1 MR JAMIESON: - this same discussion,
2 yes, it was.
3 MR NGCUKAITOBI SC: Now if there was
4 something wrong with the position that was taken by SAPS
5 and communicated to you by General Mbombo, surely someone
6 from Lonmin would have objected.
7 MR JAMIESON: Surely someone would, it
8 would surely have been the people who had been there all
9 week and been involved in all the same conversations.
10 MR NGCUKAITOBI SC: Well, you would also
11 have objected if it was wrong.
12 MR JAMIESON: No.
13 CHAIRPERSON: What exactly do you say was
14 wrong?
15 MR NGCUKAITOBI SC: Well, what was wrong
16 is the understanding that seems to have been shared
17 generally that the role of the SAPS was to negotiate an end
18 to the strike.
19 CHAIRPERSON: Was that an understanding
20 that you were aware of?
21 MR JAMIESON: No.
22 CHAIRPERSON: And was anything said in
23 your presence which made you think that that was the way
24 the police were expected to act?
25 MR JAMIESON: No.

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1 MR NGCUKAITOBI SC: Can I ask you –
2 CHAIRPERSON: Of course – sorry, just in
3 fairness I think there's a distinction that has to be
4 drawn. You remember yesterday the witness explained that
5 the evidence, according to his evidence, is their
6 information was people at, I think it was Eastern Plats who
7 wanted to work, that they were afraid for their lives, that
8 they'd be either stabbed on the way or dealt with in the
9 parking area when they got there. And a major concern of
10 Lonmin was that law and order should be restored so that
11 those who were passively participating in the strike out of
12 fear for their lives, who wanted to go back to work, would
13 be able to do so. Now that, in a sense, would have broken,
14 at least partially, the strike but it wouldn't have been a
15 result of a positive action by the police in order to break
16 the strike, if you understand what I mean. It's a
17 distinction which we mustn't ignore. I'm not saying it's a
18 total answer but in fairness to the witness, one mustn't
19 put everything together as if it's one issue.
20 MR NGCUKAITOBI SC: Yes. Can I ask you
21 about your movements on the 16th? This is something you've
22 just been asked briefly by the Chairperson.
23 MR JAMIESON: Yes.
24 MR NGCUKAITOBI SC: You've told us you
25 arrived at the JOC at about 10 o'clock.

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1 MR JAMIESON: No, it was about lunch
2 time.
3 MR NGCUKAITOBI SC: You arrived at about
4 lunch time?
5 MR JAMIESON: Yes.
6 MR NGCUKAITOBI SC: Well, I mean your
7 statement –
8 MR JAMIESON: Ja, that's what I wanted to
9 refer to in –
10 MR NGCUKAITOBI SC: - at page 15,
11 paragraph 33.
12 MR JAMIESON: Paragraph 33?
13 MR NGCUKAITOBI SC: 33, yes.
14 MR JAMIESON: Ja.
15 MR NGCUKAITOBI SC: You say, "On the
16 morning of the 16th I drove to Marikana with Phillimore."
17 MR JAMIESON: Yes.
18 MR NGCUKAITOBI SC: So that took you the
19 morning until lunch time.
20 CHAIRPERSON: No, no, no, he said he got
21 there earlier than that, as I understood his evidence.
22 MR JAMIESON: Yes.
23 CHAIRPERSON: How long did it take you to
24 get from Marble – Melrose, not Marble Arch, Melrose Arch?
25 MR JAMIESON: Hour and a half –

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1 CHAIRPERSON: How long did it take you
2 from Melrose Arch to Marikana? Hour and a half?
3 MR JAMIESON: Hour and three-quarters,
4 yes.
5 MR NGCUKAITOBI SC: And then you met with
6 Scott and there was a briefing. Was that a briefing that
7 you got from Scott?
8 MR JAMIESON: It was a briefing from the
9 rest of the management that were based at the mine.
10 MR NGCUKAITOBI SC: And you were not
11 briefed by Scott?
12 MR JAMIESON: Scott there refers to Simon
13 Scott, not General Scott.
14 MR NGCUKAITOBI SC: Not the Scott of the
15 police. Now then in paragraph 34 you refer to another, the
16 arrival of General Mbombo.
17 MR JAMIESON: Yes.
18 MR NGCUKAITOBI SC: And was it explained
19 to you what the SAPS wanted to do in relation to the
20 strikers in this conversation?
21 MR JAMIESON: No. I didn't actually know
22 even who General Mbombo was until we were introduced to
23 her.
24 MR NGCUKAITOBI SC: You say it was never
25 explained to you what the SAPS would do in relation to the

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1 strikers?
2 MR JAMIESON: No, it was explained
3 earlier in the week what, you know, the outline of the
4 police plan was, I think as early as Monday or Tuesday. I
5 think there are some handwritten notes of mine in the
6 bundle that explain that they had an operation where they
7 were going to bring a lot of police onto site, they were
8 going to try and peacefully disarm the strikers. So that
9 was explained, not directly from the police, it was
10 explained to me by Mark Munro over the telephone.
11 MR NGCUKAITOBI SC: Now at paragraph 36
12 you say you left at 15:30.
13 MR JAMIESON: Yes.
14 MR NGCUKAITOBI SC: You know that the
15 operation started, I think some 10 minutes thereafter?
16 MR JAMIESON: Yes, yes.
17 MR NGCUKAITOBI SC: Why did you leave at
18 15:30?
19 MR JAMIESON: I didn't have anything else
20 to do and I was driving back home. I'd actually postponed
21 some conference calls that I was supposed to have that
22 afternoon with some bankers in London and I was trying to
23 leave to get home to take the calls from there.
24 MR NGCUKAITOBI SC: Were you not aware
25 that the operation was going to start a few minutes after

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1 your departure?
2 MR JAMIESON: No, from when we were at
3 the JOC it was just, it was going to start this afternoon.
4 MR NGCUKAITOBI SC: Chairman –
5 CHAIRPERSON: Our time is up.
6 MR NGCUKAITOBI SC: Yes.
7 CHAIRPERSON: If there is one little
8 point you want to round off quickly I won't be harsh with
9 you.
10 MR NGCUKAITOBI SC: No, Mr Chairman, I
11 would –
12 CHAIRPERSON: But if this is the point
13 you have made and you have covered the ground you want to
14 cover then I think you must stop, am I right?
15 MR NGCUKAITOBI SC: Thank you, Mr
16 Chairperson.
17 [09:52] CHAIRPERSON: Mr Gotz, are you next?
18 MR GOTZ: Good morning, Chair and –
19 CHAIRPERSON: Remind me, Mr Wesley, how
20 long Mr Gotz has got, so the both of us can remember?
21 MR WESLEY: Mr Gotz has got two hours,
22 Chair.
23 CHAIRPERSON: He did tell me this morning
24 that he thought some points had been covered, he'd only be
25 less than an hour. Am I correctly reporting our

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1 conversation?
2 MR GOTZ: That is correct an hour
3 maximum, Chair. In fact I'll probably be shorter in the
4 light of some of the cross-examination of learned friend.
5 CHAIRPERSON: Yes you don't waste time,
6 Mr Gotz, so I'm sure you'll keep up – you'll maintain your
7 record.
8 MR GOTZ: Good morning, Mr Jamieson, my
9 name is Anthony Gotz, I'm going to be asking some questions
10 on behalf of AMCU.
11 MR JAMIESON: Good morning.
12 MR GOTZ: Can I revert very briefly to
13 this issue about the decision that was taken on the 10th of
14 August 2012 that management would not meet and engage with
15 the strikers? I'd like to take you to page 7 of your
16 statement which is dated 7 August 2012, I think this is
17 exhibit VVVV2. It's paragraph 14 on page 7 of the
18 statement. Perhaps just to get some context we can look
19 very briefly at paragraph 13 on the previous page. You'll
20 see there, Mr Jamieson, that you described in quite some
21 detail, your discussions with Mr Barnard Mokwena. You
22 reveal that Mr Mokwena informed you that there was an
23 illegal gathering, people were intent on marching towards
24 Lonmin's main administration offices, the LPD. You say
25 that you went into his office and you had a discussion with

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1 various people including Mr Kgotle and Mr Russo-Bello on
 2 speaker phone. You then describe how Barnard and you were
 3 given an overview of the developing situation. Towards the
 4 bottom of that paragraph they say that it's revealed that
 5 the demands of the strikers related to the demands of the
 6 RDOs that had been given or been made at Karee and then you
 7 turn to page 14 –

8 MR JAMIESON: Can we stop there, there's
 9 an inaccuracy there.

10 MR GOTZ: Sorry, I beg your pardon.

11 MR JAMIESON: I didn't go into Barnard's
 12 office, he came into mine.

13 MR GOTZ: Sure.

14 CHAIRPERSON: It's important in Lonmin
 15 terms to preserve the protocols in that regard.

16 MR GOTZ: We too have similar protocols
 17 at the bar. Mr Jamieson, what is quite remarkable about
 18 this paragraph is that nowhere do you reflect the fact that
 19 a decision was made either in that meeting or had been made
 20 that management would not talk to the strikers, correct?

21 MR JAMIESON: Correct.

22 MR GOTZ: And in fact what happens then
 23 is in paragraph 14 you make the most remarkable statement,
 24 on the top of page 7. You say "On a subsequent call we
 25 heard that a delegation of the strikers had refused to come

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1 into the LPD offices to talk to management as they demanded
 2 that management address them outside." And there seem to
 3 be no list of demands or grievances. Now, Mr Jamieson,
 4 you'll accept, I think in the light of the discussions that
 5 various people have had with you that these facts are
 6 incorrect.

7 MR JAMIESON: Yes.

8 CHAIRPERSON: Mr Gotz, are you going to
 9 read the next sentence as well or must I do it?

10 MR GOTZ: Well –

11 CHAIRPERSON: I don't want to take your
 12 cross-examination away from you because I always enjoy it,
 13 but if you're not going to put that sentence I'd like to.

14 MR GOTZ: I'm happy for you to take over
 15 at this point or taking over –

16 CHAIRPERSON: No I don't want to take
 17 over, no, no, the question I want to ask him, if you're
 18 going to ask it already, if you're going to ask it anyway
 19 then I must sit back and enjoy hearing you ask it and get
 20 the answer you want or don't want as the case may be.

21 MR GOTZ: Well let me take it up at the
 22 next sentence then. You say "We left it that the
 23 management personnel on the ground would deal with the
 24 situation as they deemed fit and keep us updated." You'll
 25 agree with me, Mr Jamieson, that the sense of this

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1 paragraph is that in fact it was the strikers who refused
 2 to come in and meet with management, not as we know that
 3 management had refused to meet with the strikers. And the
 4 second sense that is conveyed is that no such decision was
 5 taken, in fact you left it up to the people on the ground
 6 to deal with the situation as they deemed fit. Now none of
 7 that is correct, isn't that so?

8 MR JAMIESON: Part of it is correct. I
 9 mean I can explain the bits that I think are incorrect and
 10 the bits that I think are correct.

11 MR GOTZ: Well proceed, I don't want to
 12 interrupt.

13 MR JAMIESON: I mean I had already said
 14 it was a fast flowing discussion and I was listening in to
 15 it on the end of a telephone and what I had to do when
 16 doing the statement was put myself back then and say what
 17 did I understand. And that's what I understood at the
 18 time. However incorrect it was that's what I understood.
 19 So this part that says the delegation of strikers had
 20 refused to come to LPD, I mean that was clearly wrong and
 21 I'll readily say yes that was wrong, subsequently that I
 22 found out. On the area that says we left the management
 23 personnel on the ground would deal with the situation as
 24 they deemed fit, clearly these decisions had been taken as
 25 we saw from Barnard's supplementary statement there'd some

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1 earlier discussion that there would be no talking to the
 2 strikers. The bit I agree to yes you know, yes I did, by
 3 omission or by non-objection go along with that. The bit
 4 that that refers to is there was a discussion about whether
 5 the people in the office should go out and meet them or
 6 not, I can recall that and I've had some personal
 7 experience of doing that. And therefore my sense of that
 8 was that the people who were there have to make the call if
 9 they want to go or not. I've been out to groups of 100s or
 10 1000s and received memorandums and discussed grievances,
 11 but it's always been your personal decision to do that.
 12 No one can instruct you because there's a safety aspect to
 13 it. And I know we heard that it was relatively peaceful,
 14 but regardless of that my view is that the people who were
 15 there make that decision whether they'll do it or not. So
 16 that's what that bit referred to. Is that okay?

17 MR GOTZ: Chair, I've finished with that
 18 point relating to –

19 CHAIRPERSON: I want to ask a question,
 20 thank you. I thought you were going to make the point I'm
 21 now going to make. The second last sentence, the
 22 penultimate sentence of that paragraph is actually very
 23 misleading because – prima facie obviously that's why I'm
 24 putting it to you, to get the benefit of your inputs, it
 25 suggests that the management personnel on the ground as

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1 they're described, had a free hand, to deal with the
 2 situation. That wasn't true, the most important
 3 restriction had been imposed, whether it was imposed or
 4 they agreed to it I suppose is neither nor there, but the
 5 fact is an important, a very significant restriction had
 6 been imposed, you can do as you deem fit, but you're not
 7 allowed to negotiate because it's the policy, a decision
 8 taken that we're not going to negotiate with these people.
 9 Isn't that right?

10 MR JAMIESON: Yes.

11 CHAIRPERSON: That is a very significant
 12 qualification which should have been introduced into the
 13 penultimate sentence.

14 MR JAMIESON: Well as I explained in the
 15 distinction of this morning about the how the decision was
 16 made, so by omission or not –

17 CHAIRPERSON: That's not going to work.
 18 There was a discussion on the telephone, those at Marikana
 19 and those at Melrose Arch were talking, two groups of
 20 people.

21 MR JAMIESON: Yes.

22 CHAIRPERSON: And it was agreed between
 23 them that there would be no negotiation.

24 MR JAMIESON: Yes.

25 CHAIRPERSON: That wasn't left, you

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1 people at Melrose Arch didn't say by the way you chaps at
 2 Marikana have got free hand, you can do as you like. That
 3 wasn't said.

4 MR JAMIESON: Us people in Melrose Arch
 5 aren't in charge of those people.

6 CHAIRPERSON: No, no, no, but what was
 7 agreed was and this was an agreement from both sides that
 8 we don't negotiate with these people, you don't negotiate.

9 MR JAMIESON: Correct.

10 CHAIRPERSON: That was a very significant
 11 qualification and the penultimate paragraph is
 12 significantly misleading because that qualification is not
 13 there. Isn't that right?

14 MR JAMIESON: Well who would have come
 15 back to whom there? As I explained my interest there was
 16 about the -

17 CHAIRPERSON: This is a –

18 MR JAMIESON: If I can finish –

19 CHAIRPERSON: Yes sorry, yes please carry
 20 on.

21 MR JAMIESON: My interest in this was
 22 there was a work stoppage and how it might affect customers
 23 and deliveries.

24 CHAIRPERSON: Oh I understand

25 MR JAMIESON: So when they said you know

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1 they'll come to us, you know Barnard went back out to work
 2 at his hot desk and I imagined that if they had any
 3 further things that they wanted to come back on they'd come
 4 back to Barnard. Why would they come back to me, you know?
 5 It's not my decision, Barnard's dealing with it. That's
 6 what this means, so don't get the impression that we were
 7 sitting there waiting for them to come back to us, we were
 8 intent on making another decision, I was focusing around
 9 that.

10 CHAIRPERSON: I'm not suggesting that,
 11 I'm not suggesting that, Mr Jamieson. But what the
 12 sentence suggests is the people on the ground at Marikana
 13 had a free hand and they didn't have a free hand did they?
 14 They didn't have a free hand on a significant area as to
 15 whether they could enter into negotiations of any kind.
 16 That must right.

17 MR JAMIESON: Agreed.

18 CHAIRPERSON: Okay.

19 MR GOTZ: Perhaps just to close off this
 20 point and it may be in fairness to you, can we look at
 21 EEEE19 which is the Lonmin log book? It's an entry for the
 22 10th of August 2012 10:08 and the entry will be at 13:58.

23 CHAIRPERSON: What's the particular entry
 24 you want us to look at, Mr Gotz?

25 MR GOTZ: it's at the entry of 13:58,

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1 CHAIRPERSON: Well that's on the previous
 2 –

3 MR GOTZ: It's at the bottom of the
 4 previous page.

5 CHAIRPERSON: There we go, yes.

6 MR GOTZ: Oh sorry, I beg your pardon.

7 CHAIRPERSON: It starts actually with
 8 debrief by GS.

9 MR GOTZ: It's on the next page, yes.

10 CHAIRPERSON: It's on the next page and
 11 it's quite a long entry.

12 MR GOTZ: The third line from the top you
 13 say or it said "Management can't make decisions sitting in
 14 the office. They must allow people on the ground to make a
 15 decision." Do you see that?

16 MR JAMIESON: Yes.

17 MR GOTZ: Now I mean obviously subject to
 18 what the Chairperson has put to you, it seems to be
 19 relatively clear that management did understand that they
 20 had some discretion or am I completely wrong?

21 MR JAMIESON: I think I'll make the
 22 distinction of which management are they talking about and
 23 which management is sitting in which offices and who are
 24 the people on the ground. So if you can explain that I can
 25 perhaps answer.

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1 MR GOTZ: Let me return to the point at a
2 later stage, this is something that I simply wanted to
3 highlight for you.
4 MR JAMIESON: Okay.
5 MR GOTZ: I'm interested in a slightly
6 different question, Mr Jamieson, and that's the fact that
7 there seem to be at this stage a number of quite
8 significant decisions that are taken, including members of
9 EXCO and therefore by Lonmin itself for which there are
10 absolutely no records or no minutes of that decision. And
11 the decision not to engage with the strikers at this moment
12 is one of those decisions, correct?
13 MR JAMIESON: So which question are you
14 asking me, that there were not records taken or there was a
15 decision?
16 MR GOTZ: There are no records of this
17 decision that we've been talking about, the decision not to
18 engage with the strikers.
19 MR JAMIESON: Well it was an ad hoc call
20 as I understand it and on ad hoc calls you don't take
21 minutes or keep records.
22 MR GOTZ: Another important decision was
23 taken virtually at the same time and that decision was the
24 one to apply to the Labour Court for an urgent interdict.
25 That decision seems to have been taken by senior management

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1 for which there is no record.
2 MR JAMIESON: There would probably be a
3 record in the Labour Court.
4 MR GOTZ: No I'm talking about the fact
5 that there is no minuted record of that decision.
6 MR JAMIESON: I don't there is any
7 minuted records of the previous ones that we've taken as
8 well. If you go backwards on previous unprotected strikes.
9 It's almost like it's a procedure that swings into action
10 every time it happens. The people at the mine phone our
11 legal advisers and that process starts, I think they go
12 hand in hand.
13 CHAIRPERSON: Mr Gotz, I take it in the
14 Labour Court papers there'll be a founding affidavit and
15 the founding affidavit I think we've actually got it
16 somewhere, but we've got so many exhibits, I can't lay my
17 hands on it immediately. We've certainly got the order and
18 I think we've got the founding affidavit. The founding
19 affidavit should have a paragraph indicating the authority
20 of the deponent to the founding affidavit. And normally
21 what happens, I don't know whether it happened on this
22 occasion, you can perhaps tell us or someone else can tell
23 us there was a normally annexed a copy of a resolution of
24 the board or of some committee which with delegated
25 authority from the board to institute this particular

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1 litigation. So if I'm correct in saying that, then I
2 assume that he's right that in the records of the Labour
3 Court, as he puts it, there will be or should be or one
4 would expect there to be a copy of a resolution taken by
5 somebody, probably not the board. But I take it a body
6 with delegated authority to institute those proceedings.
7 Am I right?
8 MR GOTZ: Chair, I certainly haven't seen
9 any, but I do stand to be corrected. Chair, I don't want
10 to be making the point and I need to be clear about this,
11 I'm not making the point that that decision was
12 unauthorised either by way of delegated authority –
13 CHAIRPERSON: You're making a more
14 general point-
15 MR GOTZ: Yes.
16 CHAIRPERSON: - that decisions where you
17 say were quite important decisions of the EXCO, there's no
18 paper backing them up –
19 MR GOTZ: Yes.
20 CHAIRPERSON: - which you would expect to
21 be the case. I take it that's your point isn't it?
22 MR GOTZ: Yes indeed.
23 CHAIRPERSON: And the witness's answer on
24 this particular one you put to him was to say well ad hoc
25 decisions taken as a result of conference calls are not

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1 recorded on paper. Is that correct?
2 MR JAMIESON: That's correct, Chairman,
3 one qualification which is it wasn't an EXCO call.
4 MR GOTZ: Are you saying that wasn't a
5 decision taken by EXCO to institute the application for an
6 interdict?
7 MR JAMIESON: No my understanding – I
8 think the question you asked was not to talk to the
9 strikers was an EXCO decision. So that decision as you
10 call it not to talk to strikers I think I've answered
11 previously, my understanding and I'm not an HR expert, is
12 that it's actually the default position, if someone is on
13 an unprotected strike your first position is you don't talk
14 to them. And especially as this was an escalation, this
15 wasn't an isolated incident, a new incident. It was an
16 escalation of had happened at Karee mine before. And as I
17 described it in an analogy to Ms Pillay, was tantamount to
18 someone of Mike De Costa's core, not like in the decision
19 they got, they had no grounds for appeal. But they chose
20 to march to the Appeal Court and demand to see anyone who
21 was in the office to hear their appeal that there was no
22 grounds for. That was the analogy I used with Ms Pillay
23 and it's the analogy I will stick to. So the default
24 position is you don't talk to them, it's not a decision
25 that's affirmatively made by management, EXCO, board or

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1 anyone else.

2 CHAIRPERSON: Let's look at something a

3 bit more direct than an analogy which may cause more

4 darkness than light and that is you had a particular

5 protocol which set out the standard way of dealing with

6 unprotected strikes. That was, I would have thought, the

7 default position and it's an exhibit. I take it Mr Gotz is

8 going to come to it.

9 MR JAMIESON: It's a procedure that went

10 up I think yesterday.

11 CHAIRPERSON: Yes and that actually talks

12 about how you expect the unprotected strikers to form a

13 grievance committee and you have negotiations with them and

14 so on. One thing is absolutely clear that protocol does

15 not say you don't negotiate with unprotected strikers, it

16 says precisely the opposite, isn't that right?

17 MR JAMIESON: Correct.

18 CHAIRPERSON: So that's the default

19 position surely.

20 MR JAMIESON: Well when that was put up

21 yesterday, as I said, I wasn't aware of it and when I read

22 Barnard's supplementary statement last night I presumed

23 that all those things were actually discussed and that it's

24 options were discussed and that that was what they'd come

25 to. So when we talked on the call and the words were

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1 something like well we're not going to talk to them, no

2 we're not going to talk to them. So you say that's a

3 decision and I was part of it, I don't back away from that

4 because I now see that that possibly there was a lot more

5 discussed prior to that call which I wasn't party to, so I

6 didn't know about it.

7 CHAIRPERSON: - Mr Gotz is making is you

8 can't justify the decision on the basis of the default

9 position, you've got to do it the other way around. You've

10 got to say the default position was talk, we decided, you

11 weren't a party to it, but you say there were previous

12 discussions that you weren't a party to, but we decided, or

13 someone before you decided that we wouldn't comply with the

14 default position. I mean that's the true position isn't

15 it?

16 MR JAMIESON: Yes.

17 CHAIRPERSON: But it must be.

18 MR JAMIESON: With the qualification I

19 wasn't aware of.

20 CHAIRPERSON: Yes, yes, no, no I accept

21 that.

22 MR JAMIESON: Part of the default, I'm

23 aware of the default position -

24 CHAIRPERSON: Mr Gotz, sorry I'm

25 interrupting you.

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1 MR GOTZ: No you've made the point I

2 wanted to make, Chair. Can I move on then -

3 CHAIRPERSON: I'm sorry, I didn't intend

4 to, -

5 MR GOTZ: Can I move on to a related

6 theme and that's what arises from your supplementary

7 statement of 3 September 2014 which I understand is exhibit

8 VVVV3? Mr Jamieson, can you tell the Commissioners why you

9 produced this statement? How did it come about that you

10 produced this statement?

11 MR JAMIESON: I was asked by Fiona Lapan

12 that there had been a request from the evidence leaders to

13 explain Lonmin's position with respect to why we don't

14 minute weekly EXCO calls and ad hoc calls and what have

15 you. And the discussed ensued and I said why don't you get

16 the company secretary to write that affidavit and what she

17 said was that the company secretary is not going to give

18 evidence, you are. It is not a big deal. It is perfectly

19 explainable.

20 [10:11] Why don't you write and do the affidavit and

21 answer questions on it which I'm quite happy to, and can.

22 MR GOTZ: Can I give you a little bit

23 more background, see whether you know these facts because I

24 think that they're relatively important. Lonmin initially

25 provided the minutes that you see referred to in paragraphs

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1 2.2.2 through to 2.2.4 -

2 MR JAMIESON: Yes.

3 MR GOTZ: - of the supplementary

4 statement. They've provided those minutes in heavily

5 redacted form, only a couple of paragraphs of those minutes

6 were in fact revealed to the Commissioners and the parties,

7 correct?

8 MR JAMIESON: Yes.

9 MR GOTZ: As a consequence of a concern

10 that there may be other relevant information, AMCU's legal

11 representatives asked to have sight of the unredacted

12 minutes, are you aware of that?

13 MR JAMIESON: No.

14 MR GOTZ: What happened then is that we

15 went to inspect the unredacted minutes and it became clear

16 from the inspection that there were certain documents which

17 were referred to in the minutes which we had not yet seen.

18 One of those sets of documents were board packs which we

19 were then subsequently given access to and it also appeared

20 to us from the last minute that there was a meeting of the

21 executive committee that was scheduled for August of 2012

22 and we said, well, it may be relevant to have sight of that

23 minute. Are you aware of that?

24 MR JAMIESON: Yes, I think I am. Fiona

25 asked me, did that meeting take place and I said I don't

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1 think it did, not to my recollection. What we did after,
2 oh, probably from about the 19th onwards or something like
3 that, we actually just started to make minutes of all of
4 the meetings and that was at the instruction of the legal
5 department because the President had announced the terms of
6 the inquiry and it was deemed prudent, from then on we
7 should keep minutes.

8 MR GOTZ: I don't –

9 MR JAMIESON: When you refer to that
10 particular August meeting I think you're meaning the
11 monthly, regular monthly August EXCO meeting and I actually
12 can't remember, maybe it's in here, whether that occurred
13 or not.

14 MR GOTZ: It was scheduled, I think, to
15 occur on the 27th of August and so may have been caught up
16 in many of these other –

17 MR JAMIESON: Yes, ja.

18 MR GOTZ: - developments.

19 MR JAMIESON: There probably was no need
20 to actually have it because we were now having these almost
21 daily EXCO calls.

22 MR GOTZ: So what then happened, Mr
23 Jamieson, is that we were provided with the minutes of the
24 executive committee discussions which commenced on the 19th
25 of August and ran through to the, I think it's the 17th of

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1 decisions having affected the company having been taken,
2 there are no records of those decisions. You were
3 requested, in the light of that, to attest to your
4 supplementary affidavit, correct?

5 MR JAMIESON: No, that's not correct.

6 MR GOTZ: What is incorrect in what I've
7 said?

8 MR JAMIESON: Mr Budlender didn't request
9 me, it was Fiona Leppan but I understand it came from the
10 evidence leaders, so that's the first thing. The second
11 thing is, we weren't requested to explain why we took no
12 minutes in a particular period. It was, why did we take no
13 minutes of ad hoc informal EXCO calls, which is what this
14 deals with and as I've already said, the reason for taking
15 minutes after the events on the 16th, starting from the
16 19th, was because the terms of reference of the Commission
17 had been announced and before that there were no terms of
18 reference of the Commission announced when we commenced to
19 take them from, at the advice of our legal department.

20 MR GOTZ: You understood that what you
21 were asked to address was why there was no documentary
22 record of any EXCO meetings or discussions, formal or
23 informal, during the period 20 July through to 18 August
24 2012, correct?

25 MR JAMIESON: Yes, that's correct.

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1 September and those appear from pages 87 to 123 of your
2 bundle of documents which is exhibit VVVV1. Is that
3 correct?

4 MR JAMIESON: Correct.

5 MR GOTZ: But then it struck us that what
6 we had was a minute of the 19th of July 2012 and a set of
7 minutes commencing on the 19th of August for which there
8 seemed to be 20 minutes in the month running from the 20th,
9 the 19th of August through to the 17th of September and we
10 said to your legal representatives and to the evidence
11 leaders, but hang on, there's a month where there is
12 absolutely no record of any decision taken by Lonmin. Are
13 you aware of that?

14 MR JAMIESON: Am I aware of your
15 discussion on it or am I aware that there's no minutes?

16 MR GOTZ: Well, both.

17 MR JAMIESON: I'm not aware of your
18 discussion on it but I'm aware that there were no minutes
19 because there was no Commission during that time.

20 MR GOTZ: And so the reason for your
21 supplementary affidavit came about because you were
22 specifically requested by my learned friend Mr Budlender to
23 explain this apparent anomaly of a month having gone by
24 when we see minutes both prior to and subsequent to that
25 month, when despite the fact that there are important

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1 MR GOTZ: I'm not sure that your
2 statement actually addresses that question, Mr Jamieson.
3 In fact it evades that question. What we find in your
4 supplementary affidavit is no explanation at all as to why
5 those documents, why those decisions were not minuted.

6 MR JAMIESON: I can tell you now.

7 CHAIRPERSON: Go ahead.

8 MR JAMIESON: Well, there's no records
9 going back 10 years of any EXCO weekly informal calls.
10 Quite apart from that, the calls were instituted by Ian
11 Farmer when he became CEO, which would have been late in
12 August in 2008. Before that they didn't occur, so in Brad
13 Mills' time they didn't occur. Ian brought them in and we
14 had them pretty much every week from then on and they were
15 – the way I'd describe them is if you can remember the old
16 LA Law type soap opera where the partners would sit around
17 the table once a week or in the morning or whatever it is
18 and each of them would relate important things that were
19 going on in their areas. I mean on the TV it looked like a
20 five minute but I'm sure it was a bit longer than that and
21 that was the type of thing. It was a quick update, fast,
22 what's – if there were important decisions that I can
23 recall, they would be occasionally later minuted as part of
24 the monthly EXCO meeting. So Ian would say, look, we took
25 this decision on that call, I think it's important we

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1 record it. So you know, Peter can you record that along
 2 with the others? And I think you'll probably find, if you
 3 go back far enough you might find some instances of that.
 4 So where you're saying why was there no, specifically any
 5 minutes taken in the period 19th of July to 19th of August,
 6 the context is there were never ever any minutes taken of
 7 those meetings.

8 MR GOTZ: So what you're saying to us, as
 9 I understand it, is that despite the fact that there are
 10 important decisions that were taken, in particular during
 11 that week of the 9th of August through to the 16th of
 12 August, that there is no company record of the discussions
 13 that occurred and the ultimate decisions that were taken?

14 MR JAMIESON: There's no formal company
 15 record. I think what's been submitted is in a whole lot of
 16 e-mails that inform that time and I believe that in there
 17 are some notes that I took of probably two of the meetings,
 18 I think, and the reason for me taking those handwritten
 19 notes you'll see and then doing the notes for Simon and
 20 Roger is that when Ian was absent or Simon was absent, next
 21 person on the list to chair the meetings and take notes and
 22 then brief them was me. So I took those notes for that
 23 purpose.

24 MR GOTZ: Have you asked Mr Mokwena or
 25 has Mr Mokwena been asked, to the best of your knowledge,

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1 whether he took notes of any of the decisions that were
 2 taken?

3 MR JAMIESON: I don't know, no.

4 MR GOTZ: There certainly were meetings
 5 or discussions of an important nature that happened after
 6 the 10th of August, correct?

7 MR JAMIESON: yes.

8 MR GOTZ: You refer in your statement to
 9 meetings and discussions that happened on the weekend of
 10 the 11th and 12th of August.

11 MR JAMIESON: Correct.

12 MR GOTZ: At that, during those
 13 discussions it seems to us, reading from your statement,
 14 that an important decision was taken that you would be
 15 tasked with ensuring that police presence on the mine be
 16 increased dramatically, correct?

17 MR JAMIESON: Correct.

18 MR GOTZ: Sorry, perhaps we can just go
 19 to that paragraph of your witness statement just to provide
 20 us with context, it's paragraph 17 of your statement of the
 21 17th, of the 7th of August and that's VVV2.

22 MR JAMIESON: Yes, page 7.

23 MR GOTZ: Yes, sorry, if you just – so
 24 you were designated to try to make contact with the DG of
 25 the DMR, correct?

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1 MR JAMIESON: Correct.

2 MR GOTZ: Was there a discussion about
 3 what the content of your e-mail to the DG should entail?

4 MR JAMIESON: I have to just go back one
 5 step, if I could, and just give you how that arose.

6 MR GOTZ: Sure.

7 MR JAMIESON: There was, I can't be
 8 specific but it appears to me that it was probably on a
 9 call on the 11th of August, which was the Saturday, there
 10 was a brief exchange on the call where I'd said to Frank
 11 Russo-Bello, how, in what way can I help, you know, is
 12 there anything you want me to do? And there had been some
 13 mention of a slow response from SAPS, they couldn't get the
 14 numbers they wanted on site, they were worried about that
 15 and I said perhaps, you know, I could draft a letter for
 16 Ian or something like that to a senior police officer and
 17 organise for him to sign it and send it off to them in some
 18 way, shape or form. That was a suggestion that was made.
 19 The guys at the mine said, no, don't do that, we don't want
 20 you to do that, leave that with us, there's a sort of
 21 protocol for escalating things with SAPS so we don't want
 22 to put people's noses out of joint or words to that effect.
 23 And I said what else can I help with or what about with the
 24 DMR, we'd had the MIGDETT meetings, I'd met the DG and
 25 therefore could we, you know, might that help? And they

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1 said yes, certainly if you can do that, that would be
 2 great. So during, between whenever that call was and
 3 before the call on the 12th I'd spoken to Barnard and spoken
 4 to Frank independently and from the security reports that
 5 were circulated by e-mail, just put this e-mail together.
 6 That's what happened and then I sent it off and on the call
 7 on the 12th kind of reported back, I'd done what I was
 8 asked to do and I'd circulated that e-mail around to the
 9 EXCO people as well, so that they could see what I'd done.

10 MR GOTZ: The next thing that you did as
 11 part of your initiative, and I understand that this may
 12 have been in consultation with Mr Farmer, was address a
 13 letter to the Minister of Minerals and Energy, Susan
 14 Shabangu.

15 MR JAMIESON: That's correct, yes.

16 MR GOTZ: Was there discussion relating
 17 to the content of that letter or was that something that
 18 you decided on by yourself?

19 MR JAMIESON: No, it was Ian so, and
 20 there was a discussion on that that I had with him and
 21 there's a few of the handwritten notes that you'll see that
 22 I submitted. There's some points there that Ian raised, he
 23 thought should go into the letter and thereafter it was
 24 circulated to him, to Roger and to the rest of the EXCO
 25 members to say, are you okay with this, this is what I've

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1 sort of put together from all the notes and the calls and
 2 what have you. It was originally going to be signed by
 3 Ian, so it would have subsequently been sent over to him to
 4 sign and then sent on but right in – two things occurred in
 5 the formulation of that letter. One is that we became
 6 aware that the police officer had been killed, well, at the
 7 time I didn't know, I thought it was one striker but it
 8 ended up that there was, I think three that were killed in
 9 that altercation. So that caused some revision to it and
 10 the second thing was that Ian was hospitalised and said,
 11 and therefore he couldn't sign it. That was, it actually
 12 took quite a period of time, a longer period of time than
 13 we wanted for that letter to get there.

14 MR GOTZ: You've answered my question, Mr
 15 Jamieson, which was effectively that this was something
 16 that was circulated to the EXCO members and effectively
 17 signed off by all members of EXCO, even though you were the
 18 signatory on the document itself.

19 MR JAMIESON: Yes. I can recall I think
 20 I probably sent it around and said, you know, this thing is
 21 late already, please try and get back with any comments as
 22 soon as you can, if you don't then I'll assume that you're
 23 happy with it and I'll send it off.

24 MR GOTZ: It appears to us reading
 25 between the lines, and you must forgive me, Mr Jamieson, if

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1 we had a proper documentary record of decisions taken and
 2 discussions, probably a lot of this would be unnecessary
 3 but it does seem to us that around that time you became
 4 quite concerned, indeed all members of EXCO became quite
 5 concerned about what could be called appropriate messaging.
 6 It's a term that you use. My learned friend Mr Mpofu would
 7 probably call it spin, but in your terminology it would be
 8 regarded as appropriate messaging, correct?

9 MR JAMIESON: Correct. Was that to do
 10 with Ian's condition?

11 MR GOTZ: Well, Ian's condition being one
 12 of them but another aspect of that appropriate messaging
 13 was that the situation should be characterised as not being
 14 an IR issue, correct?

15 MR JAMIESON: Correct, yes.

16 MR GOTZ: I don't want to take you in
 17 great detail to the topics because they have been dealt
 18 with in some detail by other parties but just to perhaps
 19 summarise what the position is or was at the time. As I
 20 understand it, there was a concern amongst members of EXCO
 21 but particularly you, that consistent and appropriate
 22 messaging should be sent out to players who could have some
 23 influence over the situation and that message that was sent
 24 across was that this should not be characterised as an IR
 25 issue, correct?

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1 MR JAMIESON: That's with one correction.
 2 I think we've dealt with this at length. When you said
 3 members of EXCO and particularly me, the way it started was
 4 it was particularly the people at the mine on the ground
 5 and non-particularly me but I was tasked to escalate it
 6 because they thought it would be helpful, but I won't back
 7 away from the fact that I agreed with their concern and
 8 also with the characterisation, but we keep coming back to
 9 this insistence or however you want to characterise it, or
 10 obsession, and that's just not the case, it's not true.

11 MR GOTZ: Please don't be concerned about
 12 that. I'm not concerned whether it's an insistence or an
 13 obsession, I'm simply interested in establishing the facts,
 14 that it was part of the appropriate messaging and I think
 15 you've answered it fairly, was part of the appropriate
 16 messaging by Lonmin, by Lonmin EXCO, that this not be
 17 characterised as an IR issue and I think you've answered
 18 that, Mr Jamieson.

19 MR JAMIESON: Yes, it was important to
 20 characterise it as violence.

21 MR GOTZ: No, Mr Jamieson, sorry. I
 22 don't want to fence with you. The important messaging was
 23 partly that but it was to characterise it as not being an
 24 IR issue, correct?

25 MR JAMIESON: No, it's not the important

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1 messaging. I thought you said it's the appropriate
 2 messaging and the appropriate messaging for this head of
 3 the double-headed nature of the situation was that it was
 4 violent, it was not an orderly situation, there was
 5 killings and murder. That was what was happening on that
 6 particular issue. There's another issue which is a labour
 7 dispute and that should be characterised differently.

8 MR GOTZ: Mr Jamieson, let's see if we
 9 can cut through this. You would agree with me that the
 10 genesis of the situation that you were experiencing at
 11 Lonmin in that week of the 9th of August through to the 16th
 12 of August was effectively a wage issue, correct?

13 MR JAMIESON: No, no, not correct and I
 14 wouldn't agree with you and I didn't agree with Mr Mpofu
 15 either. I don't think you were here yesterday or maybe you
 16 were.

17 MR GOTZ: Well, I'm not sure that Mr
 18 Mpofu dealt with this in great detail. I'm –

19 CHAIRPERSON: Mr Mpofu did deal with it
 20 in fair detail and there were these analogies which we may
 21 ultimately find not to be helpful, about hybrids and Hydras
 22 and, you know, mules and Siamese twins and all this kind of
 23 thing and then I introduced another one which is a sort of
 24 two-pony cart, I think. I preferred now, this morning I
 25 thought about a two-pony carriage and the one pony was the

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1 labour dispute pony and the other one was the criminal
2 activity pony. Anyway we went into that in some detail, we
3 don't have to go into that again. It was bad enough
4 yesterday. It would be painful to do it again today.
5 [10:31] If there are points you want to ask about it may
6 I suggest you ask them after tea, unless you prefer to
7 round off before we take the first tea adjournment? I'm in
8 your hands.
9 MR GOTZ: No, let me continue after the
10 15-minute break. Thank you, Chair.
11 CHAIRPERSON: Right, 15-minute break.
12 May I ask you, sorry, I know you've got two hours, you said
13 you probably wouldn't need more than one. I think it's
14 important for Mr Burger to know how long after the tea
15 break do you think – I know it depends on interruptions
16 from me and long answers from the witness and so on, but
17 factoring that in, can you give us a kind of a forecast as
18 to how long you're likely to be?
19 MR GOTZ: Chair, given the revelations
20 that Mr Mpofu dealt with extensively, the topic
21 extensively, I'm not sure that I need more than 15 minutes
22 to wrap up now.
23 CHAIRPERSON: I take it Mr Burger will be
24 grateful for that information. We'll now take the first
25 comfort break.

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1 [COMMISSION ADJOURNS COMMISSION RESUMES]
2 [10:58] CHAIRPERSON: The Commission resumes.
3 You're still under oath, Mr Jamieson.
4 ALBERT JAMIESON: [s.u.o.]
5 CHAIRPERSON: Mr Gotz.
6 CROSS-EXAMINATION BY MR GOTZ (CONTD.):
7 Thank you, Chair. Mr Jamieson, I'd like to try and deal
8 with this as quickly as possible and what we were debating
9 before the adjournment was the various decisions that were
10 taken. It seems to us that on the weekend of the 11th or
11 12th of August 2012 a decision was taken by EXCO that what
12 was needed at Lonmin Mine was a massive police and possibly
13 also army presence in order to deal with the situation,
14 correct?
15 MR JAMIESON: No, that's not correct.
16 MR GOTZ: Mr Jamieson, sorry, if I'm
17 incorrect in something perhaps you can just explain why I'm
18 incorrect rather than waiting for the follow-up question
19 which says, why am I incorrect.
20 CHAIRPERSON: The question is
21 predictable. If you say it's incorrect then it's immoral
22 to bet upon whether the next question will be in what
23 respect was it incorrect, because it's immoral to bet on a
24 certainty.
25 MR JAMIESON: Sorry. I'm used to some of

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1 the other cross-examination.
2 MR GOTZ: Proceed.
3 MR JAMIESON: What's incorrect with that
4 is it wasn't an EXCO decision.
5 MR GOTZ: Well I mean certainly you had
6 various EXCO discussions about what needed to be done,
7 correct?
8 MR JAMIESON: No, we had these calls
9 actually had some EXCO people on them and management people
10 on them, so I wouldn't label them as EXCO calls or EXCO
11 decisions. They were simply ad hoc calls with people on
12 them who were involved or who had an interest.
13 MR GOTZ: Mr Jamieson, you in your
14 statement refer expressly to EXCO having agreed to task you
15 to do various things –
16 MR JAMIESON: Yes, in agreement by EXCO.
17 The EXCO –
18 MR GOTZ: That was the decision, correct?
19 MR JAMIESON: The EXCO members on the
20 call. I think it's a better description.
21 CHAIRPERSON: Ja, but you know, that's
22 again, that's a bit of a theoretical distinction for me.
23 If all the members of EXCO in the course of a conference
24 call agreed on something then even though it wasn't
25 formally recorded in any way, and even though it wasn't a

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1 formal EXCO meeting, it was effectively a decision of EXCO,
2 wasn't it, if they all agreed and –
3 MR JAMIESON: Well, the CEO –
4 CHAIRPERSON: - accepted that the matter
5 was going to proceed on the basis of what they'd agreed
6 would be done. So it's the equivalent of an EXCO decision,
7 isn't it?
8 MR JAMIESON: The two executive directors
9 weren't on the call. There were some people missing and
10 there were some stand-ins. That's really the only
11 distinction I'm making, and there was additional people. I
12 mean I won't split hairs on it, if you want me to put it
13 that way.
14 MR GOTZ: That's fine –
15 CHAIRPERSON: And if somebody tried to
16 take the point later that that wasn't a valid decision,
17 binding on Lonmin, because it wasn't the EXCO that so
18 decided they wouldn't get anywhere, would they?
19 MR JAMIESON: I doubt it.
20 MR GOTZ: And the point was that what
21 EXCO members, let's put it as low as that, what they wanted
22 was a massive police or army presence on the mine, correct?
23 MR JAMIESON: Yes.
24 MR GOTZ: You were tasked with securing,
25 or writing various emails, inter alia to the DG, in order

<p style="text-align: right;">Page 37662</p> <p>1 to make that proposal, correct?</p> <p>2 MR JAMIESON: Only to the DG.</p> <p>3 MR GOTZ: Your objective was to ensure,</p> <p>4 as you put it, "a massive police and possibly army presence</p> <p>5 in order to stop us having a repeat of recent past</p> <p>6 experiences on nearby," and then I assume you mean mines.</p> <p>7 MR JAMIESON: Yes, that's correct.</p> <p>8 MR GOTZ: So that's correct?</p> <p>9 MR JAMIESON: Impala and Aquarius.</p> <p>10 MR GOTZ: And after discussions with the</p> <p>11 various EXCO members you made a very similar proposal to</p> <p>12 the Minister of Minerals & Energy, Ms Shabangu, correct?</p> <p>13 MR JAMIESON: That's correct, and it was</p> <p>14 a sort of promise from the email to the DG that we'd follow</p> <p>15 up the next day with, you know, a bit more detail, a bit</p> <p>16 more accurate reflection of what had happened.</p> <p>17 MR GOTZ: The objective of your letter to</p> <p>18 the Minister was in order to persuade her that what was</p> <p>19 necessary was for the State to bring, as you put it, "its</p> <p>20 might to bear on this crucial sector of the economy using</p> <p>21 resources at its disposal to resolutely bring the situation</p> <p>22 under control," correct?</p> <p>23 MR JAMIESON: Correct.</p> <p>24 MR GOTZ: That letter was written in the</p> <p>25 morning of the 13th, or the afternoon of the 13th of August</p>	<p style="text-align: right;">Page 37664</p> <p>1 National Commissioner on that afternoon to, I think it was</p> <p>2 2:38 in the afternoon. So that enables us with more or</p> <p>3 less precision to fix at what time that conversation took</p> <p>4 place.</p> <p>5 MR GOTZ: Thank you, Chair, I'm indebted,</p> <p>6 and so I must adjust my time slightly, just to back up a</p> <p>7 little. By the 14th of August the objective of having a</p> <p>8 massive police presence on the mine had been accomplished,</p> <p>9 correct?</p> <p>10 MR JAMIESON: Yes, and that was, you know</p> <p>11 if you go back to your purpose, I'd suggest that that had</p> <p>12 occurred because of the death of the police on the Monday.</p> <p>13 That was the main thing that accelerated it.</p> <p>14 MR GOTZ: It seems to us that a</p> <p>15 discussion must have happened between EXCO members,</p> <p>16 including you and at least Mr Mokwena, where what was</p> <p>17 discussed was what happens next, and that must have</p> <p>18 happened just prior to the meeting between Mr Mokwena,</p> <p>19 various other Lonmin people and the PC in the afternoon of</p> <p>20 the 14th of August.</p> <p>21 MR JAMIESON: I don't know. I'm not</p> <p>22 sure, and when you say what happens next, if you're</p> <p>23 referring to the second bullet in the email to Cyril, that</p> <p>24 was, from my perspective was a discussion I'd had with</p> <p>25 Roger Phillimore, trying to, you know, to stay one step</p>
<p style="text-align: right;">Page 37663</p> <p>1 2012.</p> <p>2 MR JAMIESON: Correct.</p> <p>3 MR GOTZ: By the 14th of August it would</p> <p>4 be correct to say that those objectives of having a massive</p> <p>5 police presence on the mine had largely been accomplished,</p> <p>6 correct?</p> <p>7 MR JAMIESON: Yes.</p> <p>8 MR GOTZ: It then seems to us that the</p> <p>9 objectives of various members of the EXCO changed and they</p> <p>10 must have changed in the late afternoon of the 14th of</p> <p>11 August because we see the objective being reflected in</p> <p>12 emails and conversations that were recorded very shortly</p> <p>13 after that period, after the afternoon of August the 14th,</p> <p>14 and I'm referring here inter alia to a discussion that your</p> <p>15 colleague Mr Barnard Mokwena had with the Provincial</p> <p>16 Commissioner in the evening of the 14th of August. I don't</p> <p>17 want to take you there –</p> <p>18 CHAIRPERSON: I think you'll find it was</p> <p>19 about 2:30 in the afternoon actually. You may remember –</p> <p>20 were you here yesterday? – when I examined the National</p> <p>21 Commissioner I put to her that she'd had a telephone</p> <p>22 conversation with the Provincial Commissioner while she was</p> <p>23 with Mr Mokwena and in fact her side of the conversation is</p> <p>24 recorded in the transcript, and we traced that call to the,</p> <p>25 from an exhibit which gives all the phone calls of the</p>	<p style="text-align: right;">Page 37665</p> <p>1 ahead and start to think, well, the police are there now,</p> <p>2 they've had some success in restoring law and order, if you</p> <p>3 like, because things had quietened down, which was great.</p> <p>4 The next thing we need to ensure is that they stay there,</p> <p>5 they don't go away by the weekend because we could have a</p> <p>6 reversion to the events that we had from the previous</p> <p>7 weekend. So if you're referring to next steps, that was</p> <p>8 the next step discussion I had with Roger. I think that</p> <p>9 was probably just a call to him, but I know that in an</p> <p>10 email he sent out to the board he also mentioned that in an</p> <p>11 email he put to the board as well.</p> <p>12 MR GOTZ: Now Mr Jamieson, really, I</p> <p>13 don't have the – I wish I could, but I don't have the time</p> <p>14 to take you through the transcript of the meeting between</p> <p>15 Mr Mokwena and the Provincial Commissioner. I have no</p> <p>16 doubt that that will be dealt with in depth with Mr Mokwena</p> <p>17 himself, but we do want to note just at this point that</p> <p>18 this "what happens next" decision seems to have, be</p> <p>19 reflective in the statements that he is making to the</p> <p>20 Provincial Commissioner as well, and it is indeed, as</p> <p>21 you've correctly identified, precisely the point that you</p> <p>22 make in the second bullet point of your email to Mr</p> <p>23 Ramaphosa, and perhaps we can go there. It's page 34 of</p> <p>24 the bundle of documents, VVVV1.</p> <p>25 MR JAMIESON: Yes. On the point of a</p>

<p style="text-align: right;">Page 37666</p> <p>1 call, I'm fairly certain that there was no further EXCO 2 call between Tuesday and it would have been around 3 lunchtime. They were generally around lunchtime. There 4 was no further call until the Wednesday, so you'll see some 5 notes from me, handwritten notes which apply to a call that 6 we had on Tuesday. There was no further notes to that, so 7 I would, I'm fairly certain there was another call but that 8 was on the Wednesday Roger Phillimore and Simon Scott 9 arrived and Mahomed, Mahomed didn't come to Melrose Arch, 10 he went straight to the mine, and the next discussion we 11 had was what I referred to, you know, on the Wednesday when 12 I briefed Roger and Simon and then they phoned various, the 13 other various members of EXCO who were at the mine. But I 14 don't, your question was, was there another call or was 15 there some EXCO changed its mind, that was –</p> <p>16 MR GOTZ: No, Mr Jamieson, that is good 17 enough for me.</p> <p>18 MR JAMIESON: Okay.</p> <p>19 MR GOTZ: What you're confirming is that 20 there was indeed a discussion around lunchtime on the 14th 21 of August with the EXCO members.</p> <p>22 MR JAMIESON: Tuesday, yes, and that's 23 reflected in a –</p> <p>24 MR GOTZ: Tuesday, yes indeed.</p> <p>25 MR JAMIESON: Yes.</p>	<p style="text-align: right;">Page 37668</p> <p>1 MR GOTZ: Yes, indeed. We see the second 2 sentence as being a, in a sense qualifying the first point 3 that is made, "Our next challenge is sustaining this and 4 ensuring that they remain." But there seems to be this 5 additional element, which is "They need to take appropriate 6 action so we can get people back to work," correct?</p> <p>7 MR JAMIESON: Yes.</p> <p>8 CHAIRPERSON: What appropriate action did 9 you have in mind?</p> <p>10 MR JAMIESON: Well, restore law and order 11 was number 1, stop the killings and create an environment 12 in which it was then conducive where we could start to 13 address the other head of the, whatever you want to call 14 it, which was the labour dispute, to get back to that then.</p> <p>15 MR GOTZ: Well, Mr Jamieson, has that not 16 already been accomplished by the fact that you have circa 17 800 members on site? Can I ask you to look at page 23 of 18 that bundle?</p> <p>19 MR JAMIESON: Well, before we go there, 20 I'd agree with you; in the first line of the email it said 21 "Thankfully last night was relatively peaceful" –</p> <p>22 MR GOTZ: Yes, indeed.</p> <p>23 MR JAMIESON: - "as is this morning."</p> <p>24 MR GOTZ: Yes, indeed, and the document 25 at page 23, which is really a summary which was drafted by</p>
<p style="text-align: right;">Page 37667</p> <p>1 MR GOTZ: Tuesday the 14th of August there 2 was a call, a discussion, and perhaps various decisions 3 taken at lunchtime on the 14th, Tuesday the 14th of August.</p> <p>4 MR JAMIESON: There's some hand – those 5 handwritten notes that I've submitted is part of the 6 minutes. That's that call.</p> <p>7 MR GOTZ: The second bullet point 8 reflects the "what happens next" decision because what it 9 says is, "Our next challenge," after the bullet point, "We 10 are grateful the police now have circa 800 on site." So 11 your initial objective has now been accomplished, and you 12 go on to say, "Our next challenge is sustaining this and 13 ensuring they remain," and then the important point, "and 14 to take appropriate action so we can get people back to 15 work."</p> <p>16 MR JAMIESON: Yes.</p> <p>17 CHAIRPERSON: It will be helpful if you 18 read the next sentence. "It would be good to have some 19 independent confirmation the police have plans to sustain a 20 presence for at least a week and numbers don't wane by the 21 weekend."</p> <p>22 MR GOTZ: Yes, so what –</p> <p>23 CHAIRPERSON: But obviously the question 24 that you asked still has to be answered, what was meant by 25 appropriate action.</p>	<p style="text-align: right;">Page 37669</p> <p>1 Tanya –</p> <p>2 MR JAMIESON: Yes.</p> <p>3 MR GOTZ: - simply makes the point as 4 well that you're now on a point of relative calm and peace.</p> <p>5 MR JAMIESON: 23, did you say?</p> <p>6 MR GOTZ: Yes, it's 23 of the bundle.</p> <p>7 MR JAMIESON: Yes.</p> <p>8 MR GOTZ: And it's paragraph 2, "The 9 situation was relatively peaceful overnight with no 10 reported instances of unrest," and then various other 11 points which make the, which illustrate the point that 12 you're satisfied that police presence has accomplished your 13 objectives.</p> <p>14 MR JAMIESON: Yes.</p> <p>15 MR GOTZ: So I put it to you again, Mr 16 Jamieson, what "take appropriate action" means must be 17 something different from restoring peace.</p> <p>18 MR JAMIESON: No, it's, I mean when I say 19 relative, relatively peaceful, that means there was no 20 further killings. There were still elements of 21 intimidation and what have you going on and therefore they 22 had to sort of flood the area and make sure that that was 23 sustained and continued. So I wouldn't, when I say it was 24 relatively peaceful, I would put it in the context that we 25 had 10 people in the morgue.</p>

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1 CHAIRPERSON: The second line of that
 2 email talks about the people at Eastplats, I think it is, I
 3 haven't got it in front of me, but –
 4 MR JAMIESON: Yes.
 5 CHAIRPERSON: - who were keen, who wanted
 6 to go back to work but would only go back to work, could
 7 only reasonably be expected to go back to work if there was
 8 adequate protection. I think I'm correct in saying, am I
 9 not, that Mr Langa worked at Eastplats? Am I right? Is
 10 that right?
 11 MR JAMIESON: I don't know, Mr Chairman.
 12 CHAIRPERSON: Is that right? Yes.
 13 MR GOTZ: Yes.
 14 CHAIRPERSON: Mr Langa on the Monday
 15 morning had been on his way to work to Eastplats and he was
 16 murdered by, viciously murdered, 3 o'clock in the morning.
 17 So I could understand NUM people who were happy to go to
 18 work at Eastplats say we'll go, but we're not going to go
 19 if there's any chance that we'll go down the same route
 20 that Mr Langa did and suffer the same fate. So some kind
 21 of action would have been required –
 22 MR JAMIESON: Yes.
 23 CHAIRPERSON: - which would have been
 24 appropriate, I would assume, to make sure that people at
 25 Eastplats who want to work can go to work and come back

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1 from work without suffering the fate of Mr Langa. Is that
 2 the kind of thing you had in mind?
 3 MR JAMIESON: Yes, Mr Chairman, you'll
 4 remember also my explanation from the handwritten notes
 5 that Mark Munroe had said if we can just get, you know,
 6 Eastern Plats for instance secured and we can get some
 7 police presence there and we talked about the bus stops and
 8 perhaps we could get a shaft or two going there, that was
 9 yesterday I think.
 10 MR GOTZ: Mr Jamieson, I would like to
 11 put to you that what you mean by "appropriate action so we
 12 can get people back to work" is that SAPS takes some
 13 pointed action that will effectively break the strike.
 14 That is what you meant by "taking appropriate action so we
 15 can get people back to work."
 16 MR JAMIESON: No, that's not correct.
 17 It's far from the truth.
 18 MR GOTZ: You see –
 19 CHAIRPERSON: Isn't that at least partly
 20 correct what Mr Gotz puts to you, that people from
 21 Eastplats who wanted to work but were afraid that they'd be
 22 killed if they tried to go to work, they were as it were
 23 participating in the strike, albeit passively and
 24 unwillingly. Is that right?
 25 MR JAMIESON: Yes, yes.

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1 CHAIRPERSON: Right, and so the strike
 2 would be "broken" at least in part if they were enabled to
 3 go to work without fear of fatal or semi-fatal consequences
 4 and that is something that you would have achieved if the
 5 police had been able to restore law and order to the extent
 6 that it would be safe for those people to go to work. It
 7 wouldn't have been a total breaking of the strike because
 8 those who were voluntarily participating in the strike, who
 9 didn't need any intimidation to do so, would have continued
 10 striking, so the strike would have continued to that
 11 extent, but that part of the strike which was involuntary
 12 would presumably have been brought to an end. So Mr Gotz
 13 is right, is he not, in saying that at least partial
 14 breaking of the strike in the way I've explained is
 15 something that you wanted?
 16 MR JAMIESON: Well, in the letter to the
 17 Minister on the Monday I think the way that we reflected it
 18 was that it's every citizen's right to go back, going to
 19 work as they choose. It's the police's responsibility to
 20 make sure that there's law and order in place to have them
 21 do that. So while you say, you know, particularly Eastern
 22 Platinum, the distinction I could draw is it should have
 23 been –
 24 CHAIRPERSON: I put just that as an
 25 example.

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1 MR JAMIESON: It should be anyone,
 2 anywhere, any citizen who wants to come to work should be
 3 free to do so.
 4 CHAIRPERSON: Even foreign people as
 5 well, like people in Lesotho and elsewhere who weren't
 6 citizens would also be covered by that.
 7 MR JAMIESON: Ja.
 8 CHAIRPERSON: But the point is, you see,
 9 there are various ways the police could break the strike,
 10 to use that word in quotation marks. They could break it
 11 simply by creating a safe environment for those who wanted
 12 to go back to work to go back to work. They could also
 13 have gone further of course - it wouldn't have been
 14 appropriate, it would have been singularly inappropriate,
 15 but they could have also broken the strike by as it were
 16 forcing even the willing strikers to go back to work. Is
 17 that what you had in mind as well?
 18 MR JAMIESON: No, I had the former in
 19 mind, which is in that goes back to the letter to the
 20 Minister, it really echoed that, and again don't forget
 21 that – I won't say the real reason, but a reason in this
 22 email was "Please, Mr Ramaphosa, can you put pressure on
 23 the Minister to talk to us?" If she'd talked to us we
 24 would have referred to the letter, and it was a letter I
 25 refer to with the DG and the conversation with him on the

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1 Tuesday, and said we need the Minister to get involved
2 because only through her involvement do we think that we'll
3 get the relevant parties together who can resolve this on
4 the labour dispute issue, not the violence issue, and not
5 only for her to get involved, but to denounce the violence
6 which, you know, I was angry she didn't do, but also
7 understand the drivers, what is going on here, because you
8 know, it was clearly beyond us to understand the dynamics,
9 the total dynamics of the situation, and only through
10 someone in a position where you would think that she would
11 have so influenced to get the relevant parties together
12 would we get to the bottom of this.

13 [11:17] MR GOTZ: Mr Jamieson, there are two
14 indications that you are quite wrong and that you did
15 understand and you indeed meant when you said take
16 appropriate action so we can get people back to work, that
17 you meant that SAPS should take some pointed action which
18 would have the consequence of breaking the strike and I'd
19 like you to first of all refer or first refer you to page
20 24 of that bundle. This is an e-mail that you write on the
21 evening of the 14th of August 2012 at 6:23PM and bear in
22 mind that this is immediately following the meeting that Mr
23 Mokwena attends with the Provincial Commissioner. First of
24 all, you express the sadness at the discovery that a tenth
25 person has been killed behind the koppie and you then say,

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1 and this obviously I think can only have meant an
2 understanding of what was following the meeting with Mr
3 Mokwena and the Provincial Commissioner, "The police are
4 commencing their operation as outlined to us earlier to try
5 to break the back of the situation and I'll get an update
6 later this evening." Now you use the words "break the back
7 of the situation." Mr Jamieson, you may as well have used
8 the words "break the back of the strike," correct?

9 MR JAMIESON: No, it's not correct. If I
10 – two things. The police commencing their operation was
11 the operation as outlined to us earlier and if I was to
12 take you to, again to the handwritten notes of the call
13 which is number, page – sorry, page 72. So this was on the
14 Tuesday on the call, Mark had outlined what, in essence,
15 was the police's plan, I think here you'll see. So it's
16 the fourth bullet that says, "A strategy of overwhelming
17 force, hard shell helicopters, air force and take out
18 enough officers to disarm everyone peacefully." So that
19 was the description that was given on the call and when I
20 refer to the operation, it's that that I'm referring to and
21 according to your timeline the conversation with Mbombo
22 happened after this.

23 MR GOTZ: No, according to my time –
24 well, yes –

25 CHAIRPERSON: [Microphone off, inaudible]

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1 – the conversation between Provincial Commissioner Mbombo
2 and Mr Mokwena took place, according to what we ascertained
3 yesterday with precision, took place round about 2:38PM
4 early in the afternoon. Of course whether that was, you
5 were in communication at all with Mr Mokwena after that,
6 you know, is something that we, I'm not sure about.

7 MR JAMIESON: It's referenced from this
8 call and these notes.

9 MR GOTZ: And then reflecting on the
10 nature of the police operation you got –

11 CHAIRPERSON: Sorry, I'm sorry, before
12 you - he was also, I think, going to say something about
13 break the back. He said he was going to – I think I'm
14 right in saying he wanted to deal with the, what "as
15 outlined to us earlier" meant, which he's now done. Were
16 you also going to say something about break the back or did
17 I misunderstand?

18 MR JAMIESON: Ja, I mean break the back
19 was just a colloquialism. It may have been used, the words
20 used by Mark on the phone or not, that I didn't write down,
21 but that was, that was the essence of it.

22 CHAIRPERSON: What did that mean?

23 MR JAMIESON: Well, it meant to commence
24 the plan that they had said, that they were going to, you
25 know, peacefully disarm the strikers. If that had

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1 happened, of course, that started the possibility of then
2 us looking at the issue of the labour dispute.

3 MR GOTZ: Mr Jamieson, I think that's
4 good enough for me but I just wanted to point out as well
5 that in the last line of that e-mail you say, "we are glad
6 about the police operation." You say, "Although we are
7 glad about the police operation, there is always the worry
8 that it goes wrong" and what I want to put to you is that
9 that reveals that you foresaw that something could go wrong
10 and there might be injuries and possibly even deaths as a
11 consequence of the police operation.

12 MR JAMIESON: Yes, well, what Mark had
13 said on the phone was, you know, we have to be worried here
14 that this is, you know, maybe 2 or 3 000 people who are
15 armed, you've got a lot of police on site who are also
16 armed and whilst there's a plan in place that the police
17 have, which is the police's call, it's not ours, that
18 sounds like a situation where things might go wrong where
19 you've got an angry group of people who are armed and one
20 other group who's intent on taking the arms off of them.
21 It's clearly a situation has got the potential to go wrong,
22 but you would think that the police had covered those
23 eventualities.

24 MR GOTZ: I said there were two
25 indications that you were talking about appropriate action

<p style="text-align: right;">Page 37678</p> <p>1 in the sense of the police acting in a more pointed way to 2 break the strike. You will recall that Mr Ramaphosa 3 responded to your e-mail of the 15th of August 2012 in the 4 afternoon of the 15th August. He wrote his response at 5 3:13PM or a response on 3:13PM and you'll find that at page 6 47 of the bundle of documents. Sorry, I beg your pardon, 7 your response to Cyril is at 3:13PM and you'll see Mr 8 Ramaphosa's e-mail halfway down the page. It appears to 9 have been sent at 2:58PM. You say, he says to you as well 10 as other members of EXCO, "I have just had a discussion 11 with Susan Shabangu in Cape Town." And then he makes three 12 points and what I want to say to you is that those three 13 points in fact correspond to your bullet points of the e- 14 mail that you write in the morning of the 15th of August. 15 So 1) is really a response to your first bullet point. He 16 says, "She agrees what we are going through is not a labour 17 dispute but a criminal act. She will correct her 18 characterisation of what we are going through." He then 19 says in 2) and I think it's reasonably obvious that he's 20 talking about your second bullet point, "She is going into 21 Cabinet and will brief the President as well and get the 22 Minister of Police, Nathi Mthethwa, to act in a more 23 pointed way." Now Mr Jamieson, we will certainly argue 24 that when he says he will, that Minister Shabangu agrees 25 that she will get Police Minister Nathi Mthethwa to act in</p>	<p style="text-align: right;">Page 37680</p> <p>1 MR GOTZ: And we will argue that if one 2 has regard, inter alia, to the Provincial Commissioner's 3 disclosures to the press on the morning of the 16th, very 4 shortly after the 15th, she understood – she calls it a slip 5 of the tongue but she understood that what the operation 6 was intended to do was to break the strike. Would you like 7 to comment? 8 CHAIRPERSON: Can you – I don't know how 9 the witness can answer that really. Can you answer that? 10 MR JAMIESON: I actually wasn't aware of 11 the press conference, I mean – 12 CHAIRPERSON: No, after she made a media 13 statement at 9:30 where she said they, if the arms aren't 14 laid down we're going to deal with the situation, dispose 15 of it today, she then had an interview with ENCA which is 16 also before us in the form the video clip and in that she 17 used the expression, "we're going to break the strike." 18 She was questioned about that and she said it was a slip of 19 the tongue. She, however, also said she didn't do anything 20 to correct it but that's the point Mr Gotz is making but I 21 don't know whether you, a) were aware of it and b) even if 22 you were, whether you can throw any further light on it. 23 MR JAMIESON: I was neither aware of it 24 nor can throw any further light on it. 25 MR GOTZ: Mr Jamieson, thanks very much.</p>
<p style="text-align: right;">Page 37679</p> <p>1 a more pointed way, that is a direct response to your 2 concern expressed in your earlier e-mail that the police 3 need to take appropriate action so that we can get people 4 back to work. Would you agree with that? 5 MR JAMIESON: No, I wouldn't agree with 6 that and I wouldn't know because you'd have to talk to Mr 7 Ramaphosa. He also says that she will be in Johannesburg 8 by 5PM and would be able to speak to Roger and that didn't 9 happen either. 10 MR GOTZ: And that's why I say it's in 11 fact a response to your e-mail because you'll see just 12 below your second bullet point that he's talking about 13 trying to get the Minister to talk to Roger. 14 MR JAMIESON: Yes. 15 CHAIRPERSON: So what this says, "Let's 16 keep the pressure on them to act correctly." So it doesn't 17 seem to indicate any intention to get them to act 18 incorrectly. 19 MR GOTZ: But in the context, Mr 20 Jamieson, what would acting in a more pointed way or more 21 appropriate action be taken so we can get people back to 22 work, what else can that mean but take action which would 23 have the effect of breaking the strike? 24 MR JAMIESON: I don't know. I don't know 25 what those words mean.</p>	<p style="text-align: right;">Page 37681</p> <p>1 Those are our questions, Chair. 2 CHAIRPERSON: I'd like to ask one 3 question, if I may. Can we go back to the e-mail which 4 deals with the two concerns, the one that you sent off 5 early in the morning after you'd heard the Minister on the 6 radio. I can't remember the exhibit number but perhaps Mr 7 Gotz can tell me. Mr Gotz, what's that? 8 MR GOTZ: Sorry, the two concerns are 9 page 34, you'll find – 10 CHAIRPERSON: Thank you, thank you. 11 MR GOTZ: - on 37. 12 CHAIRPERSON: Now you see you talk about 13 two areas of concern. The second one is that you wanted to 14 make sure that the police sustain their presence and remain 15 and take appropriate action. That you've been questioned 16 about. And you go on to say, "It would be good to have 17 some independent confirmation that the police have plans to 18 sustain a presence for at least a week and numbers done 19 wane by the weekend." Now, actually there are really two 20 questions I want to ask you about. The first is, does that 21 indicate that you didn't envisage any action by the police, 22 decisive action by the police to take place the next day? 23 MR JAMIESON: When you say decisive – 24 CHAIRPERSON: You sent this on the 25 Wednesday morning.</p>

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1 MR JAMIESON: Yes.

2 CHAIRPERSON: We know the police took
3 decisive action, what they call their tactical option, on
4 the Thursday afternoon with cataclysmic results. The
5 question that I'm asking you is, you say here you want to
6 have confirmation that they have plans to sustain a
7 presence for at least a week.

8 MR JAMIESON: Yes.

9 CHAIRPERSON: Did you envisage them doing
10 any decisive the next day?

11 MR JAMIESON: Well, I didn't envisage
12 them certainly doing what happened.

13 CHAIRPERSON: Did you –

14 MR JAMIESON: What I was aware of is
15 what's in the handwritten notes, what was related –

16 CHAIRPERSON: Yes, yes, I understand but
17 you wanted them to sustain a presence for at least a week.

18 MR JAMIESON: Yes, because I mean what we
19 envisaged was happening and what I envisaged was happening
20 was that they'd come on site, restore law and order, but
21 what you don't want is you don't want a reversion then by
22 the weekend or thereafter, so you need a large sustained
23 presence. It's a 35 kilometre mine strike –

24 CHAIRPERSON: Yes, yes –

25 MR JAMIESON: - in order to do that.

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1 CHAIRPERSON: Alright, thank you. Then
2 the second – thank you, that's the first point. The second
3 point relates to, the second area of concern is in the
4 first bullet. You were concerned about what the Minister
5 had said, Minister Shabangu.

6 MR JAMIESON: Yes.

7 CHAIRPERSON: That this was a wage
8 dispute, management and the unions should sit down, and
9 you've explained that. You did say it was too damaging but
10 also wasn't too helpful. Did you fear that her remarks and
11 her, quote, "characterisation," unquote, might cause the
12 police to reduce the numbers on the site and not to sustain
13 their presence in the way in which it was on that day?

14 MR JAMIESON: Yes, most certainly because
15 she didn't condemn the violence and she didn't refer to it,
16 not in the bit that I had. So when, as I said this point
17 at that time was passé, the police were on site, they'd
18 started to have an effect, we wanted them to stay on site
19 maybe for weeks because we had in mind the Impala
20 disturbance and that went on for six weeks. So her being,
21 it's not too helpful when she doesn't refer to that in the
22 mind of, well, you know, it's now fixed or there's no
23 condemnation of that. So I certainly, ja, that was not
24 helpful. It was also not helpful for her to not condemn
25 the violence.

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1 CHAIRPERSON: But the point I'm asking
2 you, did you think or did you fear that her remarks might
3 have encouraged the police to slacken their activities and
4 remove some of their people and no longer, quote, "sustain
5 their presence," unquote.

6 MR JAMIESON: Yes, but I mean it was that
7 plus the fact that she hadn't condemned the violence and
8 you know you don't want to put it into the minds of people
9 that this is just a labour dispute, it's the two things.

10 CHAIRPERSON: Yes, yes, I understand.

11 Thank you. Mr Burger, I understand you were going to take
12 responsibility for the re-examination of the witness, if
13 any.

14 RE-EXAMINATION BY MR BURGER SC: Yes, I
15 only have one question arising from what happened in the
16 last half an hour. Mr Jamieson, will you go to page 24 of
17 your bundle, please?

18 MR JAMIESON: Yes.

19 MR BURGER SC: That's your e-mail to the
20 members of the EXCO of the 14th of August 2012 at about 6:20
21 that afternoon and if I read with you the second sentence
22 you say, "The police are commencing their operation as
23 outlined to us earlier to try to break the back of the
24 situation and I'll get an update later this evening."
25 You've explained to us where you get the "as outlined to us

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1 earlier from." What I want to ask you is, we know now that
2 on that afternoon at about 2:38 there was a discussion
3 between Mr Barnard Mokwena and General Mbombo. Did you
4 know about that discussion at the time when you wrote this
5 e-mail?

6 MR JAMIESON: No.

7 MR BURGER SC: Thank you, that's all,
8 Chair.

9 CHAIRPERSON: Thank you. Can the – do
10 you want me to excuse the witness?

11 MR BURGER SC: Yes, we do not have an
12 objection. We don't need to ask any further questions.

13 CHAIRPERSON: Mr Jamieson, you'll be
14 excused from further attendance. If it's necessary for us
15 to get you back, I think it most unlikely but if it's
16 necessary for us to get you back, will you undertake to
17 come back without our having to serve a subpoena on you?

18 MR JAMIESON: Yes, certainly.

19 CHAIRPERSON: Thank you. On that basis
20 you're excused.

21 MR JAMIESON: Thank you.

22 [NO FURTHER QUESTIONS – WITNESS EXCUSED]

23 CHAIRPERSON: [Microphone off, inaudible]
24 to adjourn, or are you just going to call your next
25 witness?

<p style="text-align: right;">Page 37686</p> <p>1 MR BURGER SC: We're ready to proceed, 2 Chair. Chair, the next witness is Mr Mahomed Seedat and 3 while he goes to the witness box, may I explain the paper 4 to you? He is going to speak both to phase 1 and to phase 5 2 but because he's giving evidence on phase 2, that 6 generated a lot of paper and having discussed it with my 7 colleague, Ms Pillay, we propose to lead him on phase 2 out 8 of five lever arch files. I've asked my attorney to make 9 available to each of the members of your Commission hard 10 copies of this in the course of tonight or tomorrow morning 11 but they'll be available on the screen. I intend to lead 12 him out of the hard copy, that's just a function of my age 13 and I've agreed with my learned friend that we'll call this 14 the phase 2 series which is SSSS and if we may have as 15 SSSS1 the small document which is headed "In the Marikana 16 Commission of Inquiry documents, Mahomed Seedat, theme 1." 17 It's a file of paper running to some 77 pages. 18 As the second exhibit, it will be exhibit SSSS 19 and that will have volumes 1 to 5. This would have the 20 files that I'll be referred to and then there's a one page 21 document as SSSS3 which is a cash flow of Lonmin during the 22 relevant period and I'll address that in the context of 23 phase 2 with the witness. So far the administration – 24 CHAIRPERSON: What is the relevant 25 period? How do I describe the exhibit?</p>	<p style="text-align: right;">Page 37688</p> <p>1 and nothing but the truth. Would you raise your right hand 2 and say, I swear, do you say I swear by almighty God or 3 Allah, or how do you do it? 4 MR SEEDAT: God. 5 CHAIRPERSON: God. So help me God. 6 MR SEEDAT: So help me God. 7 MAHOMED SEEDAT: (d.s.s.) 8 CHAIRPERSON: Thank you, you may be 9 seated. 10 EXAMINATION BY MR BURGER SC: Mr Seedat, 11 can I start off with referring you to your witness 12 statement which we now file in SSSS1 from page 1 onward? 13 It's been filed in different places but perhaps it's 14 convenient to consider it here. 15 MR SEEDAT: Sorry, Chair, on which, which 16 file number? 17 MR BURGER SC: That is SSSS1. It's on 18 the overhead there and you may not have it in a hard copy 19 but if you follow this one on your screen – 20 CHAIRPERSON: It's page 1, I gather, of 21 that file. 22 MR BURGER SC: It's page 1 of SSSS1. 23 CHAIRPERSON: We've had it before but for 24 convenience we have them all under one roof or actually 25 five roofs.</p>
<p style="text-align: right;">Page 37687</p> <p>1 MR BURGER SC: That exhibit is a cash 2 flow for the period, we've taken it from 2000 to 2013. 3 CHAIRPERSON: Yes, any other exhibits? 4 MR BURGER SC: Not at – 5 CHAIRPERSON: Let me just read that back 6 to you to make sure I've got it right. SSSS1, I've headed, 7 I've written down as "Mahomed Seedat: scene 1." 8 MR BURGER SC: Theme 1. 9 CHAIRPERSON: Sorry, theme 1. Theme 1? 10 Oh sorry, theme. Just as well I read it out to you. 11 "Theme 1." SSSS2 – 12 MS PILLAY: Chair, it's phase 1. 13 CHAIRPERSON: Oh, it's phase 1. Well, 14 third time lucky. "Mahomed Seedat: phase 1," close quotes. 15 SSSS2 is volumes 1 to 5 and SSSS3 is cash flow of Lonmin 16 during period 2000 to 2013. 17 MR BURGER SC: Thank you, sir. You may 18 want to swear the witness. 19 CHAIRPERSON: Would you stand, please, Mr 20 Seedat? Are you prepared to take the oath or do you, would 21 you prefer to make an affirmation? 22 MR SEEDAT: No, I'll take an oath. 23 CHAIRPERSON: Do you swear the evidence 24 you'll give in this, do you swear the evidence you'll give 25 before this Commission will be the truth, the whole truth</p>	<p style="text-align: right;">Page 37689</p> <p>1 MR BURGER SC: What is your relationship 2 today with Lonmin if any, Mr Seedat? 3 [11:37] MR SEEDAT: Currently I still have a 4 consultancy contract with Lonmin where I reserve three days 5 a month for work with them and I chair the WPL, the 6 subsidiaries, local subsidiaries WPL, EPL and Akanani. 7 MR BURGER SC: You're a qualified 8 electrical engineer and you've been in mining for a very 9 long time. 10 MR SEEDAT: That's right. I've been in 11 mining all my working life, in excess of 34 years. 12 MR BURGER SC: I want to pick up your 13 statement in paragraph 2.2 where you explain to us that you 14 were the Lonmin chief operating officer from the 1st of 15 September 2007 to 31st of December 2010. Where did you come 16 from when you arrived there on the 1st of September 2007? 17 MR SEEDAT: My previous employer was BHP 18 Billiton. I was the head of the Energy Coal Group in that 19 company. 20 MR BURGER SC: And in that capacity as 21 chief operating officer during that period did Mr Barnard 22 Mokwena report to you? 23 MR SEEDAT: That's correct. 24 MR BURGER SC: How did it come that you 25 stood down at the end of December 2010?</p>

<p style="text-align: right;">Page 37690</p> <p>1 MR SEEDAT: In October 2008 we had the 2 stock market crash. The platinum price had dropped to 3 around \$800 an ounce from being around 2 000, \$2 200 an 4 ounce. Lonmin was placed in a very difficult financial 5 position. We then had to look at how we could contain 6 costs, how we could ensure the survival of the company from 7 a financial perspective, and one of the items that came out 8 of this exercise, we called it the R&R exercise which is 9 reorganise and restructure, was that the CEO who was 10 located at that time in London primarily, and the CFO, 11 would relocate to South Africa and we would minimise the 12 size of the London office, I think it was around 35 people 13 prior to this exercise, and we would have reduced that down 14 to about six people, mainly company secretarial, and the 15 view was the moment the CEO located himself to South Africa 16 it made the job of the COO redundant and therefore we 17 agreed that I would leave the organisation after a period 18 when the CEO had been located in South Africa to give him a 19 chance to settle down and that I would leave the company, 20 and that we decided was December 2010. 21 MR BURGER SC: You came back into a 22 Lonmin senior position during the time of the tragedy. 23 Perhaps you can just explain to us how that happened – 24 MR SEEDAT: Sure. 25 MR BURGER SC: - round about the 11th of</p>	<p style="text-align: right;">Page 37692</p> <p>1 MR SEEDAT: That is correct. I was a 2 member of the main board and I was also a member of these 3 two committees of the main board. 4 MR BURGER SC: Did you also serve on EXCO 5 until 2010? 6 MR SEEDAT: That's right. In January 7 2011 I relinquished that position. 8 MR BURGER SC: But in that interim period 9 you were no longer involved in Lonmin's operational 10 matters, you tell us in 2.5, but you chaired the local 11 stakeholders forum which met quarterly. What was that 12 stakeholders forum and who were the members of that forum? 13 MR SEEDAT: We recognised some time 14 before the 2010 that we needed to engage more regularly 15 with our key stakeholders and one of the key stakeholders, 16 we had the various unions at Lonmin and we decided we'd set 17 up what we called a stakeholder forum. We consulted with 18 the unions, we established the terms of reference, and 19 having agreed to those terms of reference the stakeholder 20 forum took off. I can't remember exactly which year we 21 started with this, but I think it was probably around 2009. 22 We met every quarter. All the key, all the union 23 stakeholders were invited to that meeting and then the EXCO 24 members, excluding the CEO, would go through and present 25 the status of the company in their respective areas of</p>
<p style="text-align: right;">Page 37691</p> <p>1 August 2010. 2 MR SEEDAT: Sure, ja. Since January 2011 3 I had been appointed a non-executive director of Lonmin PLC 4 and I also had this consultancy agreement with Lonmin South 5 Africa, and that's all my involvement, was attending board 6 meetings as a non-executive director and assisting the CEO 7 as and when required, and of course chairing the local 8 subsidiaries. On the 14th of August I got a call from our 9 chairman Roger Phillimore – 10 CHAIRPERSON: That was in 2012? 11 MR SEEDAT: 2012. I had relocated to 12 Durban, so he called me in Durban and informed me that our 13 CEO Ian Farmer had taken very ill. I had heard on the news 14 the events at Lonmin in terms of the security guards who'd 15 been killed and he said we have a very difficult situation 16 developing, we are short of staff, Ian's not well, Simon 17 was on holiday, and he needed more resources to help the 18 management team locally and asked whether I wouldn't come 19 up to Johannesburg and assist, and I willingly agreed to do 20 that. 21 MR BURGER SC: I want to go back to that 22 period since your semi-retrenchment and you being called 23 back into active service, and you address that in paragraph 24 2.4. You say in that interim period you've been a member 25 of the Safety and Stability and Transformation Committee.</p>	<p style="text-align: right;">Page 37693</p> <p>1 responsibility. For example Mark Munroe would tell the 2 stakeholders how we were performing from a mining 3 perspective. Theuns Du Bruyn, and thereafter Natasha 4 Viljoen would talk to the same stakeholders about how the 5 process division was operating. 6 Albert Jamieson, who was head of Marketing and 7 Business Development would talk about what's happening in 8 the platinum world from a price perspective, what customers 9 are saying, etcetera, and also what's happening in terms of 10 exploration and business development. 11 Simon Scott, the CFO, in his absence his 12 delegate, would talk about financially how the company was 13 doing, and I think it's important to point out here that 14 the presentation that was used there was exactly the 15 presentation that was used at the board. So whatever the 16 information was presented to the board in that presentation 17 pack, was replicated and used with the stakeholders. Then 18 the objective was to ensure that the stakeholders knew 19 exactly what the condition of the company was from a 20 financial perspective. 21 Then we had Barnard Mokwena as head of Human 22 Resources and External Relations talk about issues around 23 human resources, number of people employed, how we're doing 24 in employment equity, how we're doing on housing, how we're 25 doing on all the various components of the SLP, and then we</p>

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1 allowed opportunities for any discussion. So the meeting
2 generally commences around 9 in the morning and would
3 finish around lunchtime, followed by lunch.

4 MR BURGER SC: Was it in that process
5 that you might have heard of an event which played some
6 role in these proceedings, and that is an approach by some
7 RDOs from Karee to Mr Da Costa and an increase in a
8 gratuity which followed from that? If so, will you please
9 tell the Commission about that?

10 MR SEEDAT: Ja –

11 MR CHASKALSON SC: Sorry, Chairperson, I
12 actually want to object to this leading. We agreed to
13 extensive leading of Mr Seedat because it was necessary to
14 do so in relation to phase 2. Mr Seedat is to the
15 knowledge of Lonmin and all other parties being called in
16 respect of phase 1 solely in relation to the simple dispute
17 between himself and Mr Mathunjwa on whether Mr Mathunjwa
18 sought a place at the bargaining table as a condition for
19 bringing the workers off the mountain. Nobody other than
20 AMCU is going to cross-examine Mr Seedat on phase 1. We
21 haven't had a statement on phase 1 issues beyond what's in
22 his statement. We don't have the time to have extensive
23 leading of Mr Seedat on phase 1 issues on which he's not
24 going to be cross-examined and on which people have not
25 prepared to cross-examine.

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1 CHAIRPERSON: Mr Burger, what do you say
2 about that?

3 MR BURGER SC: Chair, I've agreed with my
4 learned friend that I'll have three hours to lead this
5 witness. I will comfortably finish his evidence-in-chief
6 in the three hours, but I'll take heed of the remark and I
7 won't spend more time on this than is necessary.

8 MR CHASKALSON SC: Mr Chairperson, the
9 issue goes beyond the time that Mr Burger takes because if
10 Mr Seedat is now going to be used as a witness on phase 1
11 issues to address broader issues, then all parties must
12 have the opportunity to cross-examine him –

13 CHAIRPERSON: Mr Chaskalson, Mr Burger
14 also said, having said he had three hours, he then said he
15 would heed, take heed of what you said. So I assumed that
16 that meant that the problem you raised was something that
17 he was going to take into account. Am I right, Mr Burger?

18 MR BURGER SC: Yes, indeed, Sir. Mr
19 Seedat, you've given us evidence up to the 14th of August,
20 and in fact you've already told us about the call from Mr
21 Phillimore. Can I then take you to the events of the 16th
22 of August. You've told us what happened on the 15th. We
23 can read that in your statement, and in this little bundle
24 at page 4, in paragraph 5.1 you tell us about you meeting
25 Mr Mathunjwa on the 16th of August 2012. Will you explain

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1 to the Chairman and the Commissioners how that happened and
2 what transpired during that meeting?

3 MR SEEDAT: I arrived in Johannesburg on
4 the 15th, as per Mr Phillimore's request. We met at Melrose
5 Arch. We got an update from Albert and then we agreed we
6 would travel to the mine on the morning of the 16th and meet
7 with the management team there to get an update from them.
8 So it is in that context on the morning of the 16th that I
9 travelled to Marikana. I travelled alone. Mr Phillimore
10 travelled with Albert, and I went straight to the main
11 admin building at LPD. I still have my access card, so I
12 got straight through the access control and as I stepped
13 into the reception area I noticed Joseph and a few other
14 people sitting on the lounge suites at reception, and
15 Joseph immediately recognised me.

16 We had met previously when I was in BHP Billiton
17 when I was responsible for the South African Coal
18 Operations, and he recognised me. He stood up, he greeted
19 me and I greeted him back and he enquired from me what am I
20 doing here and I said, "Joseph, what are you doing here?"
21 in a joking way. I explained to him why I was there; I was
22 a non-executive director of Lonmin, I was asked by the
23 chairman to come and assist and it's in that capacity that
24 I've come now to assist.

25 We were talking a bit loudly and there was the

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1 press conference with the police that was going on behind
2 us in the Hossy Boardroom, so somebody asked us to shoos,
3 you know, and keep quiet, and we then moved to a corridor
4 that leads off the reception area and we continued a
5 conversation there. We exchanged cell phone numbers;
6 Joseph took my number and I took his number down, and in
7 the process of that conversation he said words to the
8 effect that "Give me a place at the negotiating table and
9 I'll get the workers off the mountain," or the koppie, and
10 I explained to him that look, it's not, I can't make any
11 decisions like that, I'm a non-executive director. I will
12 take his message to the management team that I was going to
13 see just now and, but I did explain to him based on my
14 knowledge of the industrial relations at Lonmin that there
15 were agreements in place with the unions that we had to
16 honour. So whatever we did, we had to do within that
17 structure in terms of giving him a place at the negotiating
18 table, and I left it at that.

19 He went back to sit and I went off to the, it's
20 called the Mining Boardroom, where I met most of the EXCO
21 members. Albert was there I think by that time, as well as
22 Roger, Simon, if I recall correctly Barnard was there, Jomo
23 was there, and as well as Abey. I may be wrong with some
24 of the people who were present, but generally that group
25 was there, and I conveyed Joseph's message to them and I

<p style="text-align: right;">Page 37698</p> <p>1 left it to them to then give a response back to Joseph 2 because as a non-executive director I don't want to get 3 involved in executive duties of the company, and that's 4 where I left it.</p> <p>5 MR BURGER SC: Can I ask you now to go to 6 SSSS2 and volume 3 of that for the report by Dr Forest on 7 page 1367 of that bundle. That report starts at page 1310 8 and chapter 5 of that dealing with housing, you'll remember 9 commences at 1362 and on page 1367 we have a table and as I 10 understand it this addresses the dividends paid by Lonmin 11 over a certain period of time, the housing budget over that 12 period of time and a conclusion sought to be drawn from the 13 analysis which we find at page 1367.</p> <p>14 If we can just understand the analysis, you'll 15 see the heading to table 1 is "Budgeted housing expenditure 16 versus actual dividend payments," and the source is then 17 the annual financial statements of Lonmin for a certain 18 period of time, and the last column on the right-hand side 19 says "Post crisis." Now as I understand it that means 20 after the 2008 international financial crisis, that's the 21 period addressed, and you'll see we have in that last 22 column two totals, one in the second line for the capital 23 budget for the number of houses to be built of some 426 24 million, and then in the fourth line from the top you have 25 a capital budget again for stands to be serviced of 46</p>	<p style="text-align: right;">Page 37700</p> <p>1 MR SEEDAT: Confirmed. 2 MR BURGER SC: Now can I take a step back 3 and just remind ourselves of the charter obligations of 4 Lonmin during this period? If I may ask you to have a look 5 at the 2004 charter, which you'll find in the same document 6 at page 1253, that is the charter which the Minister has 7 formulated in terms of section 100(2) of the Mineral & 8 Petroleum Resources Development Act, and you see the 9 housing obligation in 2004, you'll find at page 1258 of 10 that charter.</p> <p>11 Leading up to that, if you have your finger 12 there, we'll see where it starts at page 1253 that this is 13 published on the 13th of August 2004 and the introduction 14 explained to us the purpose of the charter, its place in 15 the transfer from old order rights to new order rights. 16 There's reference to a scorecard and the stakeholders have 17 to seek to achieve that scorecard, and there are various 18 subjects addressed here.</p> <p>19 At 1258 we have that list and we see included in 20 this debate is a debate on human resource development, over 21 the page 1259 employment equity, migrant labour, mine 22 community and rural development, and then we come to 23 housing and living conditions and we see in 2004 these are 24 the obligations under the charter. "Shareholders, in 25 consultation with Mine, Health & Safety Council, Department</p>
<p style="text-align: right;">Page 37699</p> <p>1 million. Now those figures, are they taking account of 2 inflation or are they budgeted figures unadjusted from the 3 inception?</p> <p>4 MR SEEDAT: These figures come straight 5 out of the SLP section on housing that was done in 2006 and 6 they're not inflation adjusted for the years. In other 7 words they're based on the 2006 money value.</p> <p>8 MR BURGER SC: The next interesting line 9 to the doctor is the second-last line. That's the 10 illustrative round dividend value, again for that post 11 crisis period 2008/9 to 2010/11 for a figure of R627 12 million, and as I understand her what she does is she 13 compares the total of the first two figures, 472 million 14 with 627 for a conclusion she seeks to draw. You 15 understand it that way?</p> <p>16 MR SEEDAT: Yes.</p> <p>17 MR BURGER SC: Now that figure, the 18 illustrative round dividend value, what was the value of 19 the rand over that period?</p> <p>20 MR SEEDAT: Well, she got that in the 21 line just above that and it fluctuates between 6.87 in 22 2006, reaches a high of 8.32 in 2007 and then drops down to 23 6.94 in 2009/2010, and then up to 7.98 in 2010/2011.</p> <p>24 MR BURGER SC: But that's a figure then 25 adjusted annually with reference to the exchange rate?</p>	<p style="text-align: right;">Page 37701</p> <p>1 of Housing and Organised Labour, undertake to establish 2 measures for improving the standard of housing, including 3 the upgrading of hostels, conversion of hostel to family 4 units and the promotion of home ownership options for mine 5 employees, and establish measures for improving of 6 nutrition of mine employees." Did you understand it like 7 that at the time when you joined?</p> <p>8 MR SEEDAT: Confirmed.</p> <p>9 MR BURGER SC: And 4.7, "Ownership and 10 joint venture." How important was ownership and joint 11 ventures from Lonmin's perspective pursuant to the 12 publication of the 2004 charter?</p> <p>13 MR SEEDAT: Well, clearly it was quite 14 important and the challenge of achieving that was obviously 15 a huge one and a lot of effort went into ensuring that we 16 can achieve that objective as set out in the charter.</p> <p>17 [11:57] MR BURGER SC: Then we know that that 18 charter is rewritten in 2010 and in that same bundle at 19 page 1265 we find the 13 September 2010 amended charter. 20 The explanation for why a rewriting was necessary we find 21 at page 1266. I don't have to read that out to you, but we 22 find the elements of the Mining Charter now rearranged at 23 page 1268 and following and the first one is ownership, and 24 we see in the bullet the charter now requires achieving a 25 minimum target of 26% ownership to enable meaningful</p>

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1 economic participation by HDSA by 2014.
 2 In 1270 we have a new housing charter, housing
 3 and living conditions in paragraph 2.7, and we now have
 4 three aims to achieve according to this charter. First one
 5 is to convert or upgrade hostels into family units by 2014.
 6 The second one, to attain the occupancy rate of one person
 7 per room by 2014. Now am I understanding correctly, those
 8 two are mutually exclusive?

9 MR SEEDAT: I don't believe they can be
 10 mutually exclusive, Mr Chairman, because you've got one
 11 hostel and if you're going to convert the hostel you have
 12 to convert some components to family units in the hostel
 13 and others to single-room occupancy, and clearly a family
 14 unit may have more than one person living in a room.

15 MR BURGER SC: And how did Lonmin do that
 16 allocation between the two?

17 MR SEEDAT: When we originally started
 18 the project we focussed on creating as many family units as
 19 possible and when we undertook a survey in around 2009 to
 20 establish the needs of our employees it transpired that a
 21 very large number of them preferred a single-room unit
 22 because they wanted to stay there while they were working
 23 and then go back home to their houses from their sending
 24 areas once they had finished. So we changed our philosophy
 25 and focussed on building more single-room units as we

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1 includes the BEE shareholder, Incwala, and that total is
 2 \$1.226 billion. The next line item is the dividends paid
 3 only to the BEE shareholder, Incwala, which is the BEE
 4 partner for Lonmin's local operations, and if you take that
 5 out that is \$251 million paid clearly between 2005 and to
 6 date because that's when Incwala became into, came into
 7 existence. If you deduct what was paid to Incwala from the
 8 total dividends paid to all shareholders you end up with
 9 the third line, which is \$935 million, so close to
 10 R10 billion in today's money terms.

11 The next line has a total there of \$1.5 billion,
 12 so that's 15 and a half billion rand, and that's the amount
 13 of money shareholders have had to put back into the
 14 business and primarily since 2008.

15 MR BURGER SC: Do they put that back
 16 because they like the investment, or how does that happen
 17 that they put R15 billion back into the company?

18 MR SEEDAT: Well, when I think anybody
 19 who's a shareholder in a, or holds shares on the stock
 20 exchange, you would buy additional shares based on your
 21 assumptions about what return you're going to get going
 22 forward, and you would base that on historical performance,
 23 which is the dividends you received historically from the
 24 company, and based on that your level of confidence will
 25 dictate whether you're prepared to invest more money into

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1 progressed with the hostel conversion and fewer family
 2 units.

3 MR BURGER SC: I see. That then the
 4 charter. We've looked at BEE. Can I ask you to turn to
 5 bundle 5 of SSSS2 at page 2004 so that we can just consider
 6 the BEE component of Lonmin during the relevant period. 5,
 7 page 2004. This is a table you prepared and perhaps you
 8 can explain to the Commission what you sought out to
 9 illustrate on page 2004.

10 MR SEEDAT: I tried to analyse what
 11 shareholders had received, all shareholders, and as well as
 12 look at what shareholders had to put back into the company
 13 between 2000 and 2013, and if I may go through each line?

14 MR BURGER SC: Can I just get clarity,
 15 what shareholders had received by way of dividends?

16 MR SEEDAT: By way of dividends.

17 MR BURGER SC: Yes, and what they've put
 18 in by way of rights issue?

19 MR SEEDAT: Rights issues, yes.

20 MR BURGER SC: Good.

21 MR SEEDAT: Buying more shares in the
 22 company.

23 MR BURGER SC: Yes.

24 MR SEEDAT: So the first line talks of
 25 the total dividends paid to all shareholders and that

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1 this business. So clearly shareholders thought Lonmin was
 2 a good business and effectively gave back more money to the
 3 business than they actually got out of the business,
 4 whether you take it from 2000 or you take it from 2008 post
 5 crisis, or 2006, which is the last line that I have, that
 6 between 2006 and 2013 shareholders received around
 7 \$400 million, let's say – ja R4 billion, but they had
 8 actually put into the business since 2006 R15 billion. So
 9 net shareholders effectively have sponsored Lonmin by an
 10 additional 11, let's say R11 billion since 2006.

11 MR BURGER SC: I want to ask you why it
 12 was necessary, if it was necessary to pay a dividend to the
 13 BEE shareholder, but pen that question and if you turn over
 14 to 2005 will you tell the Commission about Shanduka and
 15 Incwala Resources as the BEE partners and how that
 16 financing worked –

17 CHAIRPERSON: Mr Burger, is this going to
 18 be a longish answer? Because if it is –

19 MR BURGER SC: It is going to be a long
 20 answer.

21 CHAIRPERSON: If it is it might be
 22 appropriate to take the tea adjournment now, but I'm in
 23 your hands. You must tell me.

24 MR BURGER SC: No, it's a convenient
 25 time, Chair.

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1 CHAIRPERSON: We'll adjourn for 15
2 minutes.
3 [COMMISSION ADJOURNS COMMISSION RESUMES]
4 [12:22] MR BURGER SC: - five and you were going
5 to explain to the Commission, Incwala Resources and
6 Shanduka's role in the 26% BEE requirement under the 2010
7 Charter.
8 MR SEEDAT: Yes. Incwala Resources was
9 formed in around 2005 subsequent to the promulgation of the
10 new Mining Charter with the intention of forming this BEE
11 partner for Lonmin. Incwala would own a percentage of both
12 WPL and EPL in South Africa and Incwala would consist of
13 primarily HDSA shareholders. Originally there were three
14 cornerstone, as they call them, shareholders that owned, if
15 I recall correctly, close to 24% each and then there was
16 the IDC and there was Lonmin who were the other primary
17 shareholders. You also had shareholding for the Bapo tribe
18 which is held in a trust and Incwala Resources owned about
19 18% of the South African Lonmin subsidiaries WPL and EPL.
20 The original shareholders of Incwala, the
21 cornerstone shareholders, at some point indicated that they
22 wanted to move on and in their place Lonmin negotiated with
23 Shanduka Resources to become the primary shareholder in
24 Incwala Resources. That transaction was essentially
25 financed, about R300 million by Shanduka and Lonmin

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1 provided a loan of around two and a half billion rand to
2 enable this transaction to take place. Some of the
3 conditions attached to this arrangement was that Shanduka
4 Resources would have a permanent representative on the
5 Lonmin EXCO and they would participate in the decision-
6 making on all matters in the operation of WPL and EPL.
7 MR BURGER SC: Mr Seedat, out of that
8 vendor finance is that R2.5 billion loan by Lonmin to
9 Shanduka. Was there interest payable on that?
10 MR SEEDAT: Yes, yes, on –
11 MR BURGER SC: And how would that
12 interest be paid then? How would that be financed over
13 time? What was the intention?
14 MR SEEDAT: The intention was clearly
15 that, once again you have Shanduka or Incwala, Shanduka
16 investing in Incwala, that investment hopefully will
17 realise dividends from WPL and EPL and those dividends
18 would be used to pay back the loan and the interest on the
19 loan.
20 MR BURGER SC: What would happen if that
21 interest is not paid and that structure collapses because
22 the interested is defaulted on?
23 MR SEEDAT: Well, with the amendment to
24 the Charter in 2010 there were three non-negotiables and
25 one of them is 26% BEE shareholding. So if Incwala didn't

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1 receive these dividends that they could then pass over to
2 their shareholders to pay back their loans, that would
3 compromise the financial stability of Incwala, which could
4 have led to default which could have led to the collapse of
5 Incwala. So to ensure that we didn't, and if that did
6 happen we would have violated one of the non-negotiables in
7 terms of the revised Charter and as a result we would have
8 put the risk, our mining licence at risk, the mining
9 licence.
10 MR BURGER SC: Now I want to go back,
11 we're still looking at that column by Dr Forrest. Does she
12 in that column distinguish between dividends paid to
13 Incwala and dividends to what I would call normal
14 shareholders or not?
15 MR SEEDAT: No, she shows total dividends
16 paid to all shareholders.
17 MR BURGER SC: Now can I ask you, with
18 reference to your little table at page 2004 of volume 5,
19 what was the total dividends paid from 2006 to the present,
20 firstly to Incwala and secondly to non-Incwala
21 shareholders.
22 MR SEEDAT: From 2006?
23 MR BURGER SC: From 2006.
24 MR SEEDAT: Yes, to Incwala the total is
25 \$251 million but if you talk from 2006 we have to exclude

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1 the 27, so circa around \$224 million, so it's R2.3 billion
2 and to the non-Incwala shareholders for the period 2006 to
3 date that would have been \$975 million. Could I just point
4 out something else, Mr Chairman?
5 MR BURGER SC: Yes, please.
6 MR SEEDAT: In Ms Forrest's report she
7 talks of post-crisis and if you look at what the Lonmin
8 shareholders besides Incwala, because we know we had to pay
9 them dividends to pay their loans, the non-Incwala
10 shareholders received a sum total of about 31, sorry, \$61
11 million, R610 million post-crisis.
12 MR BURGER SC: And what did they put into
13 the company during that period?
14 MR SEEDAT: \$1.544 billion, so close to
15 15 and a half billion rand. That's billion, Mr Chair.
16 MR BURGER SC: Ja. While we look at this
17 period and the vendor finance by Lonmin, can we have a look
18 at its cash flow and you'll find that in a single page
19 document which is triple, SSSS3. Chair, these documents
20 will be delivered to you and your fellow Commissioners in
21 hard copy by tomorrow morning. Mr Seedat, you may perhaps
22 just explain to us what you seek to illustrate in the form
23 of cash flow for operations, EBITDA –
24 MR SEEDAT: Yes.
25 MR BURGER SC: - on this schedule.

<p style="text-align: right;">Page 37710</p> <p>1 MR SEEDAT: Chairman, what I've tried to 2 show here is I've taken our loans – 3 CHAIRPERSON: I'm sorry, Mr Seedat, sorry 4 to interrupt. Is it possible for the size of this document 5 to be increased so it's easier to read. If it isn't, if it 6 can't be done, if it can't be done then obviously it can't 7 be but if it can I'd be grateful, then Mr Burger can ask 8 the question again and we'll get the answer. That's a bit 9 better, yes, thank you. 10 MR BURGER SC: Chair, may I do it better 11 and ask my colleague to hand up three A3-sized documents to 12 you and it may be easier to follow? Peter, please. 13 CHAIRPERSON: Thank you. 14 MR BURGER SC: Sorry I don't have it for 15 my other colleagues but this was really prepared last 16 night. 17 CHAIRPERSON: Thank you, this does make 18 it easier. 19 MR BURGER SC: Mr Seedat, the purpose of 20 this exercise, what do you try to explain, in layman's 21 language? 22 MR SEEDAT: Ja, I tried to take out all 23 the accounting terminology which, frankly, I'm not an 24 accountant so I don't fully understand, and look at how 25 much cash Lonmin generated in any one year from its</p>	<p style="text-align: right;">Page 37712</p> <p>1 highs and the lows of that price? 2 MR SEEDAT: Ja, if you go back 10 years 3 the Lonmin share price in rand terms peaked at around R612 4 a share and it went to a low, the low at R35.93. Today 5 it's probably sitting at about R38, R39. So from 612 – 6 MR BURGER SC: That's page 2003. I'm 7 sorry, I should have showed that to you before asking this. 8 Yes, I interrupted you, I'm sorry. 9 MR SEEDAT: I must point, though, that 10 between 2000 and to date because of the rights issues, the 11 number of shares in circulation did double. So where you 12 originally had about 300 million shares in circulation, you 13 now have about 600 million shares in circulation. So if 14 you factor that in and you take the R612.26 peak and divide 15 that by half, because there's twice the amount of shares in 16 circulation, you would then be comparing around R300 a 17 share at its peak to around R38 today. So it's worth circa 18 around 10% of the value it was at its peak. So from a 19 shareholder perspective it hasn't been a good investment. 20 MR BURGER SC: If I had invested in 21 Lonmin 10 years ago, what would have been my loss today? 22 MR SEEDAT: Just in the share price alone 23 you would have lost around 70% of the value. 24 MR BURGER SC: And I invested five years 25 ago?</p>
<p style="text-align: right;">Page 37711</p> <p>1 operations. In other words, it produced platinum, the 2 platinum group metals, a certain amount of money was spent 3 producing it, it was sold, money was recovered, you covered 4 your operating costs obviously and that's the cash flow 5 from operations and then you had other things you had to 6 pay for subsequent to that, which is tax, interest, there's 7 interest received obviously and any cash that's left in the 8 bank. Capital expenditure, extremely important, any sale 9 of assets and then dividends and I only included the 10 dividends paid to Incwala. Again in comparison to the 11 Forrest report, to try to show you why the financial 12 position of Lonmin was so precarious and I say this goes 13 back from 2000 and you can see that from around 2005 as the 14 commodity cycle started developing momentum, it peaked in 15 2008 and the cash flow was very good till then but 16 subsequent to 2008 after the crash, if you look at 2009, 17 2010, 2011, 2012 and 2013, there's really one year post- 18 2008 where the operations generated a positive cash flow of 19 \$210 million. Now if you take it from 2008 to 2013 and 20 I've included 2008 because it was a good year, over that 21 period Lonmin essentially lost cash of \$313 million, which 22 explains the rights issues, why Lonmin had to go and get 23 the shareholders to put more money in the business. 24 MR BURGER SC: If we consider the Lonmin 25 share price since 2008, give us a thumbnail sketch of the</p>	<p style="text-align: right;">Page 37713</p> <p>1 MR SEEDAT: You lost about 80% of your 2 value. 3 MR BURGER SC: Now is the available cash 4 of any importance to a platinum mine from the perspective 5 of continuous development, opening up new shafts and cost 6 pressures? 7 MR SEEDAT: Absolutely important. I 8 think for someone who has not been in the mining industry, 9 one reference point is the manufacturing industry. You 10 spend lots of money, you put up a factory and you operate 11 that factory for decades. In the mining industry it's very 12 different, and Mark Munro – he used to be the head of 13 mining in Lonmin – put it very well, every few years you 14 have to rebuild your factory and let me explain that. You 15 have a shaft that you establish, from that shaft you mine 16 the ore but you can only reach so far from that shaft 17 underground before that shaft has operated beyond its 18 capability. You then have to put up a new shaft and as 19 Lonmin, I'd like to use the example of K4 shaft, it's been 20 mentioned where there were some incidents there. 21 K4 shaft is a shaft that has been in development 22 I think since around 2000, certainly long before I got 23 there. My guess is Lonmin has probably invested to date 24 around R9 billion in K4 shaft and currently from K4 shaft 25 you are getting zero return, no ore. Why? Because K4</p>

<p style="text-align: right;">Page 37714</p> <p>1 shaft needs a little more development – my guess is it's 2 around 80% complete. It still needs that 20% to be 3 completed on the shaft which is the ore reserve development 4 and there's some work to be done on the ore passes before 5 you can start mining from that shaft. So there is circa R9 6 billion of capital sitting there, cannot be used and we 7 can't finish the shaft because we don't have enough cash 8 available to finish the shaft. And it may not sound 9 politically correct to say this but if I have a choice 10 between putting money in housing or hostel conversion, I 11 would say rather put that into finishing the shaft because 12 if you finish the shaft, K4 has the potential of employing 13 a further 10 000 people, generating lots of cash which then 14 puts you in a position to do the kind of good things like 15 converting hostels and building houses. So this is the 16 quandary we've been facing since the crisis started in 17 2008, is how best to use the cash we have.</p> <p>18 Having said that, one of the areas where we've 19 tried not to compromise is in the hostel conversions. 20 There was one year, if I recall correctly, around 2009 when 21 we were really, really cash constrained where we spent a 22 lot less on the conversion of the hostels but if you look 23 at the remaining years, we've been spending on average 24 around 70 to 80 million rand on converting the hostels 25 which will be finished by the end of this calendar year.</p>	<p style="text-align: right;">Page 37716</p> <p>1 continued payment of substantial dividends to Incwala even 2 in the 2009 financial year when it recorded an underlying 3 loss of \$93 million before interest and tax. It plainly 4 did not view its housing obligations to its employees in a 5 similar light."</p> <p>6 MR SEEDAT: Ja, I guess the old saying, 7 tell me how you measure me and I'll tell you how I will 8 behave. If the Charter makes it clear that one of the non- 9 negotiables is you have to maintain your BEE 26% 10 shareholding, so if you are running the risk of that BEE 11 shareholder defaulting on their loan, you will do whatever 12 you can to prevent compromising that BEE structure because 13 if it is compromised you run the risk of losing your mining 14 licence and if you then have to repeat that exercise and 15 get a new BEE shareholder and go through the whole exercise 16 again, you're going to spend hundreds of millions of rand 17 just to establish that structure again.</p> <p>18 MR BURGER SC: She makes another 19 statement at the top of that page, right at the top of page 20 1367. If I may ask your comment for that and I'll read you 21 the first paragraph, "Nor have we seen a reasonable 22 explanation for Lonmin's failure to comply with these 23 obligations," this is now the housing obligation, "The 24 primary justification put forward by Lonmin for its non- 25 compliance with its housing obligations was the constraints</p>
<p style="text-align: right;">Page 37715</p> <p>1 MR BURGER SC: Can I, in the light of 2 that, consider something that Dr Forrest says in volume 3 3 at page 1367 and I read to you from the second last 4 unnumbered paragraph about four –</p> <p>5 CHAIRPERSON: What number is this, 1367?</p> <p>6 MR BURGER SC: 1367 and volume 3.</p> <p>7 CHAIRPERSON: Where on the page?</p> <p>8 MR BURGER SC: It's typed page 57.</p> <p>9 CHAIRPERSON: Yes, I know but where on 10 the page?</p> <p>11 MR BURGER SC: Right down, 4, 5, four- 12 fifths down there's, four lines from the top of that 13 penultimate paragraph, "For present purposes" -</p> <p>14 CHAIRPERSON: I'm just asking that so 15 that the, he can be shown the relevant section.</p> <p>16 MR BURGER SC: Oh, I see. Yes, I'm 17 indebted to you, Chair.</p> <p>18 CHAIRPERSON: We've now got "For present 19 purposes we merely point out."</p> <p>20 MR BURGER SC: "For present purposes," 21 thank you. Can I read that with you and just ask your 22 comments, Mr Seedat? The doctor says, "For present 23 purposes we merely point out that, notwithstanding the 24 effects of the financial crisis, Lonmin understood its BEE 25 obligations to be of sufficient importance to justify the</p>	<p style="text-align: right;">Page 37717</p> <p>1 of the economic climate after the financial crisis, but 2 Lonmin started defaulting on its housing obligations before 3 the financial crisis and throughout the period in which it 4 was defaulting on its housing obligations, it's continuing 5 paying dividends to its shareholders."</p> <p>6 MR SEEDAT: Ja, I think we have to start 7 off with what the actual obligation in the SLP says and I'm 8 going by memory but the SLP commitment is, Lonmin will 9 facilitate the building of houses and it will do so by 10 talking to the relevant institutions and in fact in the 11 SLP, which was done long before I joined Lonmin, in the SLP 12 it mentions that it's in discussions with Rand Merchant 13 Bank. So one's understanding is, houses were going to be 14 built with the assistance of relevant financial 15 institutions, not necessarily being put on Lonmin's balance 16 sheet in terms of assets and liabilities. So whether 17 Lonmin had made the commitment to spend its own money 18 building those 5 500 houses I think is debatable. Having 19 said that, I have gone through a timeline of what Lonmin 20 has done since the SLP was approved and the new order 21 mining licence was issued. Now, if I may just run through 22 that, Chairman –</p> <p>23 MR BURGER SC: Can I just remind you, the 24 SLP is approved in April 2007.</p> <p>25 MR SEEDAT: That's correct. That's what</p>

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1 I was getting to.

2 MR BURGER SC: Yes.

3 MR SEEDAT: During 2006 clearly Lonmin

4 prepared the SLP and made its application to the Department

5 of Mineral Resources and although I wasn't here, in another

6 mining company that is involved there's a lot of iterations

7 you go through, workshops, et cetera, before your SLP and

8 your application is accepted and clearly that happened

9 between 2006 and April 2007, as has been pointed out, when

10 new order mining rights were eventually issued to Lonmin.

11 Lonmin's financial year starts in October each year and I'm

12 assuming now that the conversion was done, the management

13 would have applied themselves in terms of putting budgets

14 in place and plans in place to start delivering against

15 their obligations or the commitments they made. In

16 November 2007, so this is some months after the new order

17 mining right was issued, Lonmin embarked on a housing needs

18 analysis and they used a waiting list of people wanting

19 houses as one way of trying to understand what employees

20 wanted.

21 [12:42] And it was at this focus group interview that

22 they called them, plus, minus 600 people were interviewed.

23 Clearly that takes some time to do the interviews, to

24 distil the information out of it and to come up with a

25 plan. What came out that, one of the key components or

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1 messages that came out that exercise in 2007 was that 85%

2 of employees expressed a need to want to live in the

3 Marikana area, close to where they work. Subsequent to

4 that, using that information in 2008 a meeting was held

5 with the National Union of Mine Workers and that is a

6 document that is one of these files –

7 MR BURGER SC: Chair, I'm going to refer

8 to that. The market research the witness referred to, I'm

9 not going to deal with now, but you'll find it in Mr

10 Barnard Mokwena's file which will be lodged tomorrow from

11 page 1 onwards. It's a very thick document that 2008

12 market research and the witness has referred to this. What

13 I would like to refer to at this point in the chronology is

14 volume 4, Mr Seedat, at page 1463 you now consult on that

15 market research with the interested parties and that's

16 minute of Essential Housing Forum Meeting Held on the 27th

17 of August 2008.

18 MR SEEDAT: That's right. That meeting

19 primarily I think NUM represented there because that's the

20 category of people that this housing initiative was aimed

21 at. A presentation was done to them which I think is just

22 later on in the same pack.

23 MR BURGER SC: We don't have the right

24 page on the screen, that's page 1463 of volume 4 of SSSS2.

25 1463, that's the document.

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1 CHAIRPERSON: We're at 1462 at the

2 moment, we need 1463, there we are. Perhaps that can be

3 enlarged a little bit.

4 MR BURGER SC: Thank you.

5 MR SEEDAT: So the presentation was done,

6 the minutes discuss some of the discussions that took

7 place, the unions had made some suggestions about options,

8 providing a front and a back door as an example and other

9 things. There was a concern about electricity being

10 available because Eskom was fairly - if you recall in 2008

11 they had their power crisis and Eskom had told Lonmin that

12 the earliest that we would be provide electricity be around

13 2010. So they looked at gas as an option and found that to

14 be too expensive. I don't want to go through all the

15 details.

16 MR BURGER SC: If you would go to page

17 1463 you'll see there's a debate about three types of

18 houses.

19 MR SEEDAT: Yes.

20 MR BURGER SC: Chair, that's the next

21 page.

22 MR SEEDAT: Yes and there was a debate

23 about these houses, there was a debate about the options.

24 It was then agreed that they would build three show houses

25 so that employees would have an opportunity to look at

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1 these show houses and express their choice of what they

2 wanted. There's a second presentation in here, just after

3 the one that I referred to –

4 MR BURGER SC: 1484 that's in September.

5 MR SEEDAT: Which is an update on the

6 presentation that was done to the unions which incorporated

7 their suggestions. So –

8 MR BURGER SC: Sorry, I'm interrupting

9 you again. 1488 we see now a 3D model of one of the

10 houses, one of the show houses, 1488.

11 CHAIRPERSON: I'm seeing it upside down.

12 MR BURGER SC: There it is, thank you

13 very much.

14 CHAIRPERSON: So we're seeing it

15 sideways, I suppose we can.

16 MR BURGER SC: There we go.

17 CHAIRPERSON: Oh there we go now.

18 MR SEEDAT: As you can see we looked at

19 solar water heaters to try to overcome the challenges of

20 electricity and the costs of using electricity to heat

21 water. So by September 2008 we were ready to start with

22 the next phase which is build the three show houses and

23 then hopefully in that new financial year build the

24 remaining 97 houses.

25 MR BURGER SC: Did you have proclamation

<p style="text-align: right;">Page 37722</p> <p>1 by then?</p> <p>2 MR SEEDAT: We had proclamation, 3 sufficient land proclaimed for the 100 houses, but 4 definitely not to extend this to the full commitment that 5 were made in SLP. We then started with the building of 6 these show houses, but sorry I must just say something, 7 this was done in September 2008, October 2008 is when the 8 financial crisis hit us. As I mentioned previously the 9 price of platinum dropped from just over \$2000 a fine ounce 10 to around \$800 a fine ounce. Clearly Lonmin had to 11 contemplate the implications of that in terms of its cash 12 position in terms of the loans it had with the banks, the 13 covenants attached to those loans. So we went into what we 14 call the R and R exercise, the reorganise, the restructure 15 exercise and ultimately we followed all due processes, we 16 involved the DMR, we kept them informed. Ultimately by 17 around June 2009 we had retrenched, if I recall correctly, 18 around 3000 people.</p> <p>19 MR BURGER SC: Can we go to volume 4, 20 page 1556?</p> <p>21 MR SEEDAT: Yes that's the notification 22 to the DMR to Sandile who was a DG at the time and to the 23 Minerals and Mining Development Board of Lonmin's plans to 24 enter into this R and R exercise. As I said this took the 25 better part because of consultation periods, you've got to</p>	<p style="text-align: right;">Page 37724</p> <p>1 organisation left with some capability that we would have 2 used for things like housing. In spite of that we did 3 build the three show homes. We carried on with the 4 exercise, that cost, if I recall correctly around R600 000 5 and gives you an indication that the cost of these houses 6 by 2009 had increased from the estimate of R114 000 a house 7 which is in SLP and which is quoted in the Forrest report 8 to over R200, R220 000 per house by 2009. And it was in 9 line with the inflation we saw in the building industry. 10 So we built the houses, we had employees come through the 11 houses and that is when we picked up comments that 12 employees really don't want houses they want to rent units 13 preferably single units. We then undertook a survey to get 14 our data right –</p> <p>15 MR BURGER SC: Mr Mokwena is going to 16 tell the Commission tomorrow of an August survey which was 17 done August 2010 in order to re-evaluate the needs of the 18 workers and what comes out of that survey just briefly, Mr 19 Seedat?</p> <p>20 MR SEEDAT: Yes that what I was referring 21 to is what we call an integrated human settlement strategy 22 which is taking into account government's objective in 23 terms of housing, taking into account what we'd heard from 24 the employees. And looking at how we could then go forward 25 with facilitating the building of these houses so that the</p>
<p style="text-align: right;">Page 37723</p> <p>1 give unions an opportunity to discuss what you intend 2 doing. I think the period is either 4 weeks or 6 weeks and 3 then you finalise your plans.</p> <p>4 MR BURGER SC: Any objections from the 5 Mining Development Board?</p> <p>6 MR SEEDAT: No in fact what we were told 7 by the DG is because we started with retrenching executive 8 directors first then EXCO members like myself and then 9 senior management and then at the last we went down to – by 10 the way we started with shareholders by not giving them any 11 dividends in 2009. They were happy with the process that 12 followed because we started with the relatively most 13 advantaged till we went down to the least advantaged.</p> <p>14 MR SEEDAT: Were you at that same time 15 also obliged to do another rights issue?</p> <p>16 MR SEEDAT: Yes we were because as we 17 went through this exercise in 2009 we realised that our 18 cash position was looking very precarious and if memory 19 serves me correctly, I think we raised \$417 million so 20 that's in today's money turns around R4 billion. So the 21 2009 financial year which is from October 2008 to September 22 2009 our minds were totally preoccupied with making Lonmin 23 survive. No time to really think about anything else and 24 in fact as I indicated the retrenchment we embarked on were 25 across the board. So even a lot of people who left the</p>	<p style="text-align: right;">Page 37725</p> <p>1 integrated human settlement strategy was produced, if 2 memory serves me correctly, around November 2010. And then 3 it was approved by the EXCO in that month and then it went 4 to the next stage.</p> <p>5 MR BURGER SC: Well just pause there, 6 that document we find in volume 5 at page 1742 and 7 following. 1742 volume 5. Lonmin Human Settlement 8 Strategy October 2010. I'd like to read with you a few of 9 the findings here please. At page 1750 we see there 10 towards the end of that page there's a phase 1 envisaged.</p> <p>11 MR SEEDAT: Yes there's a project plan 12 somewhere else in the document and that's the first phase 13 of that project plan. And you can see the bullet points 14 there on what this is going to focus on which is really 15 around continuing with the hostel conversions, preparing 16 the land to conform with what we were trying to achieve. 17 And I should make a comment here that in line with 18 government's housing strategy we were going to look at what 19 we call densification. So instead of having one house per 20 plot which was clearly unaffordable for employees, we were 21 going to look at more units in the same space. And they 22 talk of a unit - somewhere in this document they talk of a 23 number that they used to identify this. So we were going 24 to follow that strategy, we were going to look at more 25 dense units. In fact we looked at other examples around</p>

<p style="text-align: right;">Page 37726</p> <p>1 the country for example in Cape Town if you're driving from 2 the airport into Cape Town city you see these housing units 3 off the highway. We looked at those as well and we were 4 going to try to replicate some of that here.</p> <p>5 MR BURGER SC: It's in that same 6 timeframe that the mining charter gets changed and the 7 housing aims get rewritten.</p> <p>8 MR SEEDAT: That's true, that's correct, 9 yes.</p> <p>10 MR BURGER SC: Page 1775 addressing the 11 possibility of getting a housing subsidy from the 12 government for the workers and why did that now work out as 13 nicely as one would have hoped?</p> <p>14 MR SEEDAT: Sadly the problem we 15 encountered is that our employees earned too much to 16 qualify for a subsidy from government, but again too little 17 to be able to get a loan from the banks. So they're caught 18 in what I call the Twilight Zone. So that became a major 19 challenge for us because as we went through this first 20 phase and we called for proposals from institutions, 21 banking, developers then the conclusion we came to once we 22 got these proposals back is that all of these institutions 23 expected Lonmin to carry this liability in terms of the 24 costs of building, etcetera on its books. Now we just 25 talked about Lonmin's financial position being quite</p>	<p style="text-align: right;">Page 37728</p> <p>1 yes we wanted the arrangements to be arms length so that 2 between the employee and the developer the contractual 3 arrangement would exist. What Lonmin was prepared to offer 4 is to be able to do the deductions for the home loan or the 5 rental out of its salary system, pay system. But that's as 6 far as Lonmin could go in terms of its capability 7 financially.</p> <p>8 MR BURGER SC: And what did the banks 9 want?</p> <p>10 MR SEEDAT: Well the banks wanted all 11 kinds of guarantees from Lonmin. Effectively it's coined 12 in a phrase somewhere that I saw is that they just wanted 13 to be the project managers. So all risk belongs to Lonmin 14 or to the employee and all they were going to do is come on 15 site and help build these units without any major financial 16 input from themselves.</p> <p>17 MR BURGER SC: And what effect, if any, 18 would have on Lonmin's balance sheet if it now becomes a 19 guarantor to the housing scheme?</p> <p>20 MR SEEDAT: Well as I mentioned, our 21 financial position in 2010 was very precarious, we were on 22 the brink of violating some of our covenants on the loans 23 we had with some banks. We couldn't take any further risk 24 on our books.</p> <p>25 MR BURGER SC: We talk about this</p>
<p style="text-align: right;">Page 37727</p> <p>1 precarious, so putting these liabilities on Lonmin's books 2 just made it much more difficult for Lonmin to meet its 3 covenants as well. So this is where we actually got stuck. 4 How do we go forward? We can't get institutions to come 5 forward with using their funds, employees can't get loans 6 for them to be able to build these houses and get financing 7 from the banks and Lonmin's financial position was too 8 precarious to put any of this debt on its books. And 9 that's effectively where we ended up in 2010.</p> <p>10 MR BURGER SC: Was the idea that you 11 would build the houses with the assistance of construction 12 companies and banks and once the house is built then 13 ownership will step in and obligations will be between the 14 owner and the bank and Lonmin will fall out of the 15 equation?</p> <p>16 MR SEEDAT: Yes it goes back to what we 17 said in the original SLP which is we will facilitate with 18 banking institutions. So that's what we were getting back 19 to is find the right institutions, facilitate this building 20 of the houses. Lonmin was still going to provide the land, 21 free of charge. Lonmin was still going to provide the 22 services it had already provided there like sewerage 23 treatment, water reticulation, free of charge, so the 24 developer and the employee gets a bit of a leg up in being 25 able to see their dream come true of owning a house. And</p>	<p style="text-align: right;">Page 37729</p> <p>1 twilight zone where the workers fall between two stools. 2 Page 1776 do that in a diagrammatic form and you'll see 3 there is a category between R1500 and R7500 per month, 4 1776.</p> <p>5 CHAIRPERSON: Where is this on the page? 6 Is this the rental housing ladder? Part of the rental 7 housing ladder?</p> <p>8 MR BURGER SC: There it's coming up now 9 in that – ja the third window from the top, Social Lonmin, 10 84% of Category 3 to 9 earn 4336 per month. And then 11 there's a narrative to the right.</p> <p>12 MR SEEDAT: And this comes out of 13 government's, I think they call the document "Breaking New 14 Ground." This is an excerpt out of that document in terms 15 of what government strategy was.</p> <p>16 MR BURGER SC: At page 1784 we see that 17 new policy being described in paragraph 1.5 towards the end 18 of the page "Breaking New Ground." And whereas the earlier 19 idea was that one would have separate houses, the three 20 show houses at page 1787 we're not told about the 21 advantages of higher densities, 1787 at the top. That's 22 correct.</p> <p>23 MR SEEDAT: That's right. We 24 benchmarked, as I mentioned one of them was Cape Town, but 25 we also benchmarked other similar developments and the</p>

<p style="text-align: right;">Page 37730</p> <p>1 little number you see in red on top that's a number that is 2 used to define the density per hectare. So 164 in the one 3 case, 75 in the other and 293 in the case of Middleburg, 4 Gauteng. This is what we tried to emulate, but as I said 5 it just got to the point where the banks just wanted to be 6 project managers and Lonmin couldn't support those in terms 7 of its financial status and therefore we couldn't progress 8 any further with this.</p> <p>9 MR BURGER SC: You've told us that EXCO 10 agreed to this. We find this new Integrated Human 11 Settlement Strategy, we find that in volume 4 at page 1503. 12 A letter addressed to the members of EXCO copied to Mr 13 Wayne Hill and it's dated 17 November 2010, 1503 volume 4.</p> <p>14 CHAIRPERSON: We're quite a way from 1530 15 at the moment. I see it's 1 o'clock, Mr Burger. So when 16 it's convenient for you we'll take the lunch adjournment, 17 but you can carry on until you consider it appropriate for 18 us to take the adjournment.</p> <p>19 MR BURGER SC: Perhaps I can just finish 20 this document and then I'm at the end of this subject. 21 You're aware of this document, are you?</p> <p>22 MR SEEDAT: Yes I am. This is just 23 before I left Lonmin, so this was the last key areas that I 24 discussed with the EXCO, it was as you see, the November 25 EXCO. And I think to highlight here that on the second</p>	<p style="text-align: right;">Page 37732</p> <p>1 MR BURGER SC: Yes, I am. 2 CHAIRPERSON: So Mr Gotz is standing by 3 to cross-examine on the small little aspect relating to 4 phase 1, but that will have to stand over then.</p> <p>5 MR BURGER SC: I don't want to make 6 promises, we discussed with him, I don't want to keep him 7 here. If I run till 20 to 4 you'll forgive me, but I'll 8 probably be the better part of the afternoon.</p> <p>9 CHAIRPERSON: Well, you see, how long are 10 you going to be, Mr Gotz? You told me maximum half an 11 hour.</p> <p>12 MR GOTZ: Yes, Chair, I can't see it 13 being longer than half an hour.</p> <p>14 CHAIRPERSON: We'd been asked by the 15 municipality to ensure that we leave here at 4 because they 16 need the premises for another meeting, so I think in the 17 circumstances we'd better – sorry, Mr Gotz, but it's 18 obviously important for Mr Burger to have time to present 19 his case fully. You won't be prejudiced, but it doesn't 20 look as if you're going to get a chance this afternoon.</p> <p>21 MR GOTZ: Thank you, Chair. 22 EXAMINATION BY MR BURGER SC (CONTD.): Mr 23 Seedat, I just want complete the chronology, take it 24 through from 2010 to 2012 now. Can I ask you whether 25 Lonmin was looking for funding again in 2012?</p>
<p style="text-align: right;">Page 37731</p> <p>1 page, the table reconfirms the fact that 85% of employees 2 wanted rental units and only 15% wanted ownership and 3 that's how we tried to structure what we were trying to do. 4 The EXCO supported this and I mentioned the project plan, 5 that's on the next page, 1505.</p> <p>6 MR BURGER SC: And the EXCO approval at 7 page 1507.</p> <p>8 MR SEEDAT: That's right. 9 MR BURGER SC: Yes. 10 MR SEEDAT: So the EXCO approved this, 11 but as I said sadly we got to the first stage which is 12 getting proposals from various developers and banks and 13 couldn't find a financially viable option.</p> <p>14 MR BURGER SC: Is this a convenient time, 15 Mr Chairman?</p> <p>16 CHAIRPERSON: Certainly. We'll adjourn 17 until a quarter to two.</p> <p>18 [COMMISSION ADJOURNS COMMISSION RESUMES] 19 [13:54] CHAIRPERSON: The Commission resumes. 20 You're still under oath, Mr Seedat. 21 MAHOMED ISMAIL SEEDAT: [s.u.o.] 22 CHAIRPERSON: Mr Burger. 23 MR BURGER SC: Thank you, Chair. 24 CHAIRPERSON: Do I understand you're 25 going to take the rest of the afternoon –</p>	<p style="text-align: right;">Page 37733</p> <p>1 MR SEEDAT: That's right. Towards the 2 beginning of 2012 we realised that our financial position 3 was not secure. We were at risk of violate the covenants 4 related to the loans we had and one of the options that was 5 first explored was trying to tap into the bond market and 6 our chief executive at the time, Ian Farmer, and the CFO, 7 Simon Scott, went to test the market in the US. This was 8 done around July 2012 and the feedback they gave the board 9 in August was that the market wasn't the right place to go 10 and seek additional funding through bonds, two reasons, one 11 is obviously Lonmin's rating determines the premium you pay 12 for a bond and that was, you know one was registered as 13 junk bond and therefore the premium you pay would be quite 14 high.</p> <p>15 Secondly the feedback they got from some of the 16 potential customers they talked to about getting a bond, 17 because Lonmin's cash flow – and I showed that cash flow 18 segment area – Lonmin's cash flow was going to be negative 19 in several years, the forecast, the bond customers felt 20 that it wasn't appropriate to finance a company that had 21 negative cash flow. So in August of 2012 that option was 22 abandoned and then Lonmin embarked on the rights issue – 23 CHAIRPERSON: When in August? 24 MR SEEDAT: August, essentially by the 25 end of July 2012 it was abandoned. It was reported at the</p>

<p style="text-align: right;">Page 37734</p> <p>1 board meeting in August.</p> <p>2 CHAIRPERSON: What was the date of the</p> <p>3 board meeting?</p> <p>4 MR SEEDAT: Chairman, I don't have it</p> <p>5 offhand.</p> <p>6 CHAIRPERSON: It was after the</p> <p>7 catastrophe?</p> <p>8 MR SEEDAT: It was after. It was after.</p> <p>9 So as I say they came back in July because I recall Ian</p> <p>10 Farmer came back, attended the July board meeting, then</p> <p>11 fell very sick, was confined to the UK and then by the 16th</p> <p>12 of August we knew, that week we knew that it was pretty</p> <p>13 serious. It was the meeting after that, that, the board</p> <p>14 meeting that we had towards the end of August that it was</p> <p>15 formally reported at the board meeting and a decision taken</p> <p>16 to rather now proceed to a rights issue. Lonmin looked at</p> <p>17 its cash flow projections. It looked at what it needed to</p> <p>18 sustain itself. It looked at what capex it may require and</p> <p>19 it then decided to go for a rights issue which was in gross</p> <p>20 terms around \$850 million and that rights issue, it's a</p> <p>21 lengthy process but effectively kicked off around November</p> <p>22 2012, if I remember correctly, and was concluded in about</p> <p>23 January 2013. That's when we got the additional \$877</p> <p>24 million.</p> <p>25 MR BURGER SC: Somewhat anecdotal, but</p>	<p style="text-align: right;">Page 37736</p> <p>1 whole lot of winters with one or two very good summers in</p> <p>2 between, and especially if you're a single, what we call a</p> <p>3 single-trick pony. If you're a single commodity business</p> <p>4 like platinum you have to structure yourself financially</p> <p>5 that you can enjoy the good times, but also ride through</p> <p>6 the bad times, and one of the decisions the board took in</p> <p>7 2012 is that funding of new shafts will be done with own</p> <p>8 cash, we're not going to borrow, because the problem with</p> <p>9 borrowing is the bad times it's difficult to pay, we</p> <p>10 haven't got the cash flow. But if you have cash reserves</p> <p>11 that you use you can ride the bad times much more easily.</p> <p>12 MR BURGER SC: I want to go over to your</p> <p>13 social and labour plan. Much of that's been said by Dr</p> <p>14 Forest, let's just put that into perspective. We know that</p> <p>15 the first SLP gets finalised – sorry, we have a recording</p> <p>16 problem.</p> <p>17 CHAIRPERSON: I don't know what's been</p> <p>18 missed. It might be an idea to sort of go back a sentence</p> <p>19 or two –</p> <p>20 MR BURGER SC: Yes, right.</p> <p>21 CHAIRPERSON: - just to make sure that</p> <p>22 what you said is on record.</p> <p>23 MR BURGER SC: Much has been said in the</p> <p>24 Forest report on the social and labour plans, and I want to</p> <p>25 put that into perspective. We know from your evidence that</p>
<p style="text-align: right;">Page 37735</p> <p>1 just to explain how [microphone off, inaudible] 2008 was,</p> <p>2 shortly before [inaudible] was there an offer made to</p> <p>3 Lonmin by Exxaro?</p> <p>4 MR SEEDAT: By Exxaro, that is correct.</p> <p>5 You know Exxaro is a diversified mining company. It's very</p> <p>6 huge. It decided to make a hostile bid for Lonmin and in</p> <p>7 and around September 2008, literally I think it was a week</p> <p>8 before the crisis, they made an unbinding offer to Lonmin</p> <p>9 for around 33 million – sorry, £33 a share, bearing in mind</p> <p>10 that Lonmin's share price currently is around £2.70, and as</p> <p>11 I say, I mean they had a view obviously that platinum was</p> <p>12 on the rise, they were happy to offer £33 a share.</p> <p>13 Literally a week later platinum had dropped from \$2100 a</p> <p>14 fine ounce to around 800 and Exxaro in that week had bought</p> <p>15 shares in Lonmin and it got to just below 25%. Until today</p> <p>16 they hold those shares, they've made it clear, they've been</p> <p>17 taken over by Glencore and the chief executive of the</p> <p>18 combined company, Ivan Glasenberg, has made it quite clear</p> <p>19 that he's not interested in being in the platinum business</p> <p>20 but he's not in a hurry to dispose of his shares because</p> <p>21 clearly there's a lot of value to be lost.</p> <p>22 But that gives you an indication of how positive</p> <p>23 things can be one day and literally overnight become very</p> <p>24 negative. Mike Teke, who's currently the president of the</p> <p>25 Chamber of Mines, put it very well; he says mining is a</p>	<p style="text-align: right;">Page 37737</p> <p>1 the social and labour plan - one should really speak of the</p> <p>2 singular there - gets finalised in April 2001 –</p> <p>3 MR SEEDAT: 2007.</p> <p>4 MR BURGER SC: In that document we find</p> <p>5 in SSSS2 in volume 1 –</p> <p>6 CHAIRPERSON: Sorry, I thought the</p> <p>7 witness said something. What did you say?</p> <p>8 MR SEEDAT: Well, it gets finalised in</p> <p>9 April 2007.</p> <p>10 MR BURGER SC: Yes.</p> <p>11 MR SEEDAT: I thought you said 2001.</p> <p>12 MR BURGER SC: No, 2007.</p> <p>13 MR SEEDAT: Apologies.</p> <p>14 CHAIRPERSON: Yes, you said 2001, but</p> <p>15 it's been sorted out now.</p> <p>16 MR BURGER SC: Sorry. Two old men</p> <p>17 talking to each other and we're bound to misunderstand each</p> <p>18 other. Volume 1 page 76, if we go to paragraph 3.7.2 that</p> <p>19 deals with housing –</p> <p>20 MR SEEDAT: I'm sorry, which volume?</p> <p>21 MR BURGER SC: Volume 1.</p> <p>22 MR SEEDAT: It's not in my – I'll look at</p> <p>23 it there, it's fine.</p> <p>24 MR BURGER SC: Volume 1, page 76,</p> <p>25 paragraph 3.7.2, housing, and the first three paragraphs</p>

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1 tell us about company-owned housing.
 2 MR SEEDAT: Yes, this is up to 2006
 3 Lonmin had been providing company-owned housing for its
 4 employees. Clearly the majority of the category 328s were
 5 housed in hostels, overcrowded rooms, but there were also
 6 houses that were available to those category of employees,
 7 limited number of houses, and then the officials, the more
 8 senior staff are also housed in houses in Mooinooi.
 9 Towards the end of 1999 Lonmin if I recall
 10 correctly embarked on a joint project with Rustenburg
 11 Municipality where they created this Marikana Housing
 12 Development Company and they put up around a thousand
 13 housing units in Marikana and the intention with those
 14 housing units was to sell them to the employees on a rent-
 15 to-buy basis. In other words the price was fixed on the
 16 day the employee took ownership, or occupation of the
 17 house, and the figure is around 60-odd thousand rand. The
 18 monthly rental is around R500 and clearly after 10 years of
 19 paying that rental the house becomes, is owned by the
 20 employee and the transfer happens.
 21 Now of those 1 100-odd houses to date I think
 22 only 220 have actually been transferred onto the employee's
 23 name, and you would ask yourself this is such a good deal,
 24 you pay R500 a month rental, you pay the same rental
 25 unescalated for 10 years, you buy the house at the price

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1 that was agreed 10 years ago at R60 000, and we've been
 2 scratching our heads and wondering why is this take-up not
 3 more, and the majority of employees have a few thousand
 4 rand in outstanding rental owing. They're behind on their
 5 rental, and we looked at, you know, using money from their
 6 pension funds and other options to cover that. But on
 7 deeper analysis you realise that actually the employees do
 8 not want to take ownership. They'd rather rent because
 9 once they take ownership the rates, the electricity, the
 10 water, all become their responsibility. In fact in the
 11 original agreement the moment they occupy the unit the
 12 electricity and the water was their responsibility and they
 13 renege on that and Lonmin's been carrying that
 14 responsibility for those employees that have not been,
 15 without recovering, have not been paying the water and
 16 electricity.
 17 So it's quite a safe thing to do, but I guess in
 18 some ways if you look at 220-odd houses being transferred
 19 to the occupants, whereas the other 85% not being, it ties
 20 up with the survey we did which said that 85% of employees
 21 want to rent accommodation, they do not want to own
 22 accommodation in the Marikana area. So maybe that sort of
 23 explains why employees do not want to encumber themselves
 24 with having to pay rates and other things for a house in
 25 the Rustenburg area, even though financially it's a good

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1 deal. You buy for 60 000, you could sell it for, today
 2 probably R300 000.
 3 MR BURGER SC: Towards the end of that
 4 page 76 we now deal with the future during the course –
 5 COMMISSIONER HEMRAJ: I'm sorry to
 6 disturb you. Just before you go any further, when do you
 7 say those houses were built, Mr Seedat?
 8 MR SEEDAT: I'm speaking from memory, but
 9 they were built from 1999 onwards.
 10 COMMISSIONER HEMRAJ: Alright. Sorry to
 11 have interrupted you, Mr Burger.
 12 MR BURGER SC: Not at all. The future is
 13 addressed in the penultimate unnumbered paragraph on page
 14 76 and this is where the idea of 5 500 houses come in and
 15 over the page you'll see, I pick it up at the foot of page
 16 76, over to 77, "The housing development and hostel
 17 conversion activities described in this section will be
 18 carried out by a housing association using the
 19 institutional model for housing provision as recommended by
 20 the National Government Housing Strategy. Lonmin Platinum
 21 intends to facilitate the building of these houses through
 22 entering into partnerships with banking institutions and in
 23 particular has commenced discussions with Rand Merchant
 24 Bank who are likely to provide the necessary funding." Now
 25 was that the model at the time?

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1 MR SEEDAT: Clearly.
 2 MR BURGER SC: I want to ask you, this
 3 SLP is prepared and has this become available to the DMR?
 4 MR SEEDAT: Yes, well as I mentioned
 5 earlier, you submit all of this to the DMR. They then
 6 review it, they will call all affected stakeholders
 7 together, which is employee representatives, community
 8 representatives, into a workshop with the employer. This
 9 SLP is discussed, comments are taken back and changes are
 10 acquired if necessary and so finally once it's finalised
 11 you submit it back to the DMR. If they're happy with it
 12 they will issue you your conversion.
 13 MR BURGER SC: We're going to go through
 14 this year by year and we're going to see DMR responses to
 15 this. Have you prior to preparing for this case been privy
 16 to those responses by the DMR?
 17 MR SEEDAT: No, these documents, except
 18 for one, the section 93 –
 19 MR BURGER SC: Yes.
 20 MR SEEDAT: The others we had not seen
 21 before.
 22 MR BURGER SC: I see. Well, then we have
 23 this SLP. Then the one for 2008 we find in the second
 24 volume at page 549 and following. Chair, we don't find in
 25 the papers the comments by the DMR to the plan we've just

<p style="text-align: right;">Page 37742</p> <p>1 seen, the original plan. It may be somewhere, but we 2 haven't been shown it, but we'll find the reactions 3 presently. 2008 we file the amended, upgraded plan, and at 4 page 549 we deal with housing and hostel conversion. We 5 see in paragraph 15 towards the top of that page, "Lonmin 6 is committed to provide affordable housing and to convert 7 all existing hostels to single and family units." 8 Then in the table we see there was a target of 9 houses, 1 300 had to be built, actual zero, variant 1 300, 10 so there was no performance there, and in the first bullet 11 after NB towards the end it says, "The target for the 12 number of houses that should have been built in 2007 was 13 700, none of which was built." 14 Over the page that's expanded upon and on page 15 551 we're told about the challenges and the risks. You'll 16 see the challenges, meeting the commitments that have been 17 made and the risk, financial constraints of current 18 economic climate, and then building affordable houses that 19 are acceptable to the employees it's said there's a 20 challenge and the risk, high interest rates, availability 21 of capital, and then I read the bullet under that, "The 22 areas where the building of the houses were going to take 23 place had not been proclaimed as townships by the time 24 building activities should have been started. Delays in 25 the proclamation process had not been anticipated when</p>	<p style="text-align: right;">Page 37744</p> <p>1 quote from the original SLP – 2 CHAIRPERSON: I think you've got to go 3 further down the page. What is on the screen, yes, now 4 it's on the screen. 5 MR BURGER SC: Yes. Housing provision 6 employees North West, and you see there's the reference to 7 Rand Merchant Bank which was the original 2007 plan, and 8 over the page – 9 MR SEEDAT: That's right. 10 MR BURGER SC: - 1607, that was the old 11 original budget. 12 MR SEEDAT: That's right. 13 MR BURGER SC: So the author of this 14 report was presumably looking at the 2007 SLP to write a 15 report in 2009. 16 [14:13] MR SEEDAT: Yes. I mean he would have 17 only one SLP which is the one we submitted in 2006 – 18 MR BURGER SC: Yes. 19 MR SEEDAT: Ja. 20 MR BURGER SC: Then in that year, 2009, 21 you give an updated SLR and that we find back in volume 2 22 at page 645 – 23 CHAIRPERSON: You say SLR, I think you 24 mean SLP. 25 MR BURGER SC: SLP, I'm so sorry. SLR is</p>
<p style="text-align: right;">Page 37743</p> <p>1 submitting the SLP for approval." Could you perhaps just 2 expand on that? 3 MR SEEDAT: Yes, I think you've got to 4 look at the third bullet point as well. We had some stands 5 available and I think that's why the 700 of the 1 300 were 6 initially intended to be built where we had partial 7 proclamation, but there were problems there and that's why 8 when you saw the proposals, the issues around electricity 9 and we looked at alternatives like gas and solar power. 10 Those were available, but beyond the initial commitment of 11 the 700-odd in 2007 we couldn't progress until the 12 proclamation of the remainder of the township was done, and 13 if I recall correctly, and Barnard will be better able to 14 speak on it, but if I recall that was only done around 15 2010. 16 MR BURGER SC: We find the first DMR 17 report September 2009 in volume 4. Perhaps you keep volume 18 2 with you because we'll have to come back to it, but if we 19 go to volume 4 at page 1600 we find a departmental report 20 September 2009, and is this one of these documents you've 21 only seen now in preparation? 22 MR SEEDAT: That's right, never seen 23 before. 24 MR BURGER SC: And at page 1606 deals 25 with housing and what we find at 1606 to 1607 is simply a</p>	<p style="text-align: right;">Page 37745</p> <p>1 a motor car, that's the one I remember very well. Page 2 645, it's now a different format. It's a Lonmin document, 3 it's the Social and Labour Plan, Annual Report 2009 and do 4 you want to point out anything on page and over the page to 5 us? You'll see over the page at 646, table 4 deals with 6 housing. 7 MR SEEDAT: Ja, we changed the format in 8 the sense that we created an executive summary in the 9 front, which is what you see here, listing all of the 10 commitments and where we stand and then later on in the 11 document we expand on why we have under-achieved or over- 12 achieved. 13 MR BURGER SC: Let's go to 682 for that 14 explanation and I don't want to read it all but perhaps, Mr 15 Seedat, you can have a look at 682 and 683 and highlight 16 what you consider relevant as a report to the DMR in 2009. 17 MR SEEDAT: Well, in the Forrest report 18 mention is made of the three houses that we said we'd built 19 and in the context of what I'd said earlier about this 20 being part of the plan, discussed with the unions, those 21 three houses were built. Hostel converted, because of the 22 financial crisis that we'd entered in October 2008 we did 23 not keep any funds aside to do any hostel conversion, so 24 that explain why we didn't achieve that objective. We talk 25 to the proclamation of the 800 stands in Marikana Extension</p>

<p style="text-align: right;">Page 37746</p> <p>1 2 and an additional 1 500 stands, so although some progress 2 was made in the proclamation of these stands, in the actual 3 building of houses, not any acceptable progress except for 4 the three units we talked about previously.</p> <p>5 MR BURGER SC: Did you have any reaction 6 from the DMR which was negative?</p> <p>7 MR SEEDAT: Not to my knowledge, no.</p> <p>8 MR BURGER SC: In fact, the next DMR 9 report we find back in volume 4 at page 1626. That's dated 10 the 7th of May 2010 and in that report at page 1650 the 11 department deals with housing and they've clearly now read 12 what was happening because we now have a reaction to what 13 you've told them and the latest plan update. At page 1650 14 towards the second half of the page there's a reference to 15 the 3 200 houses that should have been built, only three 16 show houses had been built, the various challenges 17 experienced by Lonmin, the action plan for the 100 houses, 18 that's the new strategy and then they end off to say, "Will 19 it be viable to build all those 5 500 houses for the 20 employees amidst the challenges indicated above? The 21 company should rather split this number into half, one half 22 can be built for the employees and the other half can be 23 built for the community members assisting with housing in 24 the municipality." Was that ever mooted by the department 25 while you were at Lonmin?</p>	<p style="text-align: right;">Page 37748</p> <p>1 copper, chrome, and when we had the old order mining rights 2 these were all included in that, there were no issues. We 3 understood that when you do the conversion, whatever you 4 had as the old order mining right would become the new 5 order mining right. So we had assumed that when we got the 6 new order mining right, all of these associated minerals 7 were still, we were still legally processing them. You 8 have to mine them as far as the ore body – you can't pick 9 and choose these little microscopic bits and say you're 10 not, you can't mine them. We had, in fact all of the 11 facilities prior to the conversion had been set up to do 12 this and it's done by all the platinum mining companies. 13 So we were doing this and then we get a note from the DMR 14 that says they have a prospecting right over these 15 associated minerals, as they're called, over the properties 16 where we are mining.</p> <p>17 MR BURGER SC: Awarded to whom?</p> <p>18 MR SEEDAT: This ex-director of Lonmin. 19 And then coincidentally while we're having the dispute we 20 have this and in this note, if I may refer you to page 21 1523, although it's supposed to be talking about 22 commitments to SLP, if I refer you to paragraph 3 – sorry, 23 item 3 the first paragraph, it talks there that Western 24 Platinum was found to mining UG2 and Merensky reefs, blah- 25 blah-blah and towards the bottom it talks about selling the</p>
<p style="text-align: right;">Page 37747</p> <p>1 MR SEEDAT: No, I don't recall that 2 discussion. In any event, if that suggestion was brought 3 to us, it actually doesn't make much sense because as you 4 are de-densifying the hostels, you're getting more people 5 looking for accommodation and our priority would be to 6 ensure that all, I think the number is around 16 000 7 because there'd be about 6 000 that would be housed in the 8 hostels and the existing houses and the remaining 16 000 we 9 had to find a solution for. So this, if it was presented 10 to us, we would have found unacceptable because it wouldn't 11 solve the problem for our employees.</p> <p>12 MR BURGER SC: Now comes a rather nasty 13 surprise. Lonmin gets a section 93 order from the 14 department. You find that in this volume 4 at page 1521 15 and Dr Forrest refers to it and draws certain conclusions 16 from it. Now let's just put that into perspective. 1521, 17 you'll find the date at page 1524, the 3rd of August 2010.</p> <p>18 MR SEEDAT: Yes. Lonmin had never 19 received a section 93 like this before. The issuing of it 20 was quite coincidental because we were in dispute with an 21 ex-director of Lonmin who was an ex-director-general in one 22 of the other government departments, relative to the mining 23 of what we call associated minerals, when you mine the PGM. 24 Now the ore body that you mine for the platinum group 25 minerals also has other base metals in them, for example</p>	<p style="text-align: right;">Page 37749</p> <p>1 following precious and base metals, platinum group metals, 2 chrome, copper, nickel, notwithstanding the fact that the 3 two companies are authorised in the mining right to mine 4 for platinum group metals only. It was the first time this 5 reference had been made in this way on an SLP audit. So we 6 found it quite strange. We did –</p> <p>7 CHAIRPERSON: I'm sorry, I can't follow 8 this because it's not on the screen. What paragraph are 9 you reading from, Mr Seedat?</p> <p>10 MR SEEDAT: It's section 3 on page 1523.</p> <p>11 CHAIRPERSON: I don't know, my page, the 12 page number is on the screen but I don't see that.</p> <p>13 MR SEEDAT: That first –</p> <p>14 MR BURGER SC: There's a manuscript 15 number -</p> <p>16 CHAIRPERSON: Oh, there you are.</p> <p>17 MR BURGER SC: - to the right, Chair.</p> <p>18 CHAIRPERSON: Where's it?</p> <p>19 MR SEEDAT: That first paragraph just 20 under –</p> <p>21 CHAIRPERSON: "It was found that Western 22 Platinum is currently mining" –</p> <p>23 MR SEEDAT: Yes.</p> <p>24 CHAIRPERSON: - "the UG2 and Merensky 25 reefs," yes. That's the paragraph, right?</p>

<p style="text-align: right;">Page 37750</p> <p>1 MR SEEDAT: Yes.</p> <p>2 MR BURGER SC: Just read that again</p> <p>3 please, Mr Seedat?</p> <p>4 MR SEEDAT: "It was found that Western</p> <p>5 Platinum is currently mining the UG2 and the Merensky</p> <p>6 reef," these are the two main platinum-bearing reefs,</p> <p>7 "whereas Eastern Platinum is mining the UG2 reef" because</p> <p>8 it makes economic sense only to mine UG2 on the eastern</p> <p>9 side of the property. "It was also discovered and</p> <p>10 confirmed through the annual reports and interim reports</p> <p>11 that EP and WP are mining, processing and selling the</p> <p>12 following precious and base metals, platinum group metals,</p> <p>13 chrome, copper, nickel, gold, notwithstanding that the fact</p> <p>14 that the two companies are authorised with the mining right</p> <p>15 to mine for platinum group metals." What is implied there</p> <p>16 is, you're only supposed to mine and process the PGMs,</p> <p>17 platinum group metals but you're doing all of these other</p> <p>18 things, you're mining gold, you're mining chrome and you're</p> <p>19 mining nickel. These are all in very small quantities,</p> <p>20 present in the same ore body and prior to 2006 we were</p> <p>21 doing exactly the same and post-2006 we were doing exactly</p> <p>22 the same. So this, we were very uncomfortable receiving</p> <p>23 this letter because it appeared to be linked to the dispute</p> <p>24 around the processing of those associated minerals.</p> <p>25 MR BURGER SC: And it's in this query</p>	<p style="text-align: right;">Page 37752</p> <p>1 numbered paragraphs which deal with particular problems</p> <p>2 doesn't only relate or they do not – they do not only</p> <p>3 relate to para 3 dealing with the PGM metals and the other</p> <p>4 non-PGM metals but also relates to the earlier comments</p> <p>5 which include the reference to the ABET classes and further</p> <p>6 on there was something to do with housing as well. So I</p> <p>7 don't understand your problem, Mr Seedat.</p> <p>8 MR BURGER SC: Well, perhaps you can try</p> <p>9 to find the reference to housing earlier in that letter</p> <p>10 because I couldn't.</p> <p>11 CHAIRPERSON: The advantage of seeing the</p> <p>12 –</p> <p>13 MR SEEDAT: It's under paragraph 3,</p> <p>14 section 6.</p> <p>15 CHAIRPERSON: No – no.</p> <p>16 MR SEEDAT: Conclusion.</p> <p>17 CHAIRPERSON: No – no, that's the point.</p> <p>18 There are three numbered paragraphs 1, 2, 3. Then there's</p> <p>19 a separate paragraph with no heading which says, "Based on</p> <p>20 the above findings, the following orders, directives and</p> <p>21 instructions are hereby issued to you in terms of section</p> <p>22 93 of the Minerals and Petroleum Resources Development Act,</p> <p>23 Act 28 of 2002." Then there are a number of, a series of</p> <p>24 numbered sub-paragraphs which deal with various problems.</p> <p>25 The first one is the gaps in the ABET programme which</p>
<p style="text-align: right;">Page 37751</p> <p>1 that we find paragraph 6, requesting you to submit a plan</p> <p>2 to address housing and living conditions of the employees.</p> <p>3 MR SEEDAT: Ja, that's right. I mean</p> <p>4 we'd been submitting –</p> <p>5 CHAIRPERSON: But what's the problem</p> <p>6 about that? One of these paragraphs relates to gaps in the</p> <p>7 ABET programme, that was dealt with earlier in the letter</p> <p>8 under another paragraph number. If you look at the</p> <p>9 beginning of the letter you'll see before they get to</p> <p>10 paragraph 3 which talks about the PGM metals and the</p> <p>11 others, they also talk about other things, including the</p> <p>12 ABET programme. So clearly this, "Based on the above</p> <p>13 findings" paragraph relates not only to paragraph 3,</p> <p>14 findings on the mining work programme but to the earlier</p> <p>15 paragraphs which deal with other problems. Let's look</p> <p>16 earlier in the letter. Unfortunately we haven't got copies</p> <p>17 yet but it was on the screen, I saw it – let's go up</p> <p>18 further, just go up further, up further still.</p> <p>19 MR BURGER SC: 1521 paragraph 1.1.</p> <p>20 CHAIRPERSON: Ja, I thought I saw it,</p> <p>21 yes. There, you see. Paragraph 1.1 deals with the ABET</p> <p>22 problems and that is a paragraph, that's paragraph 1.1 as</p> <p>23 Mr Burger says, which is part of paragraph 1 which is</p> <p>24 headed "Social and Labour Plan." So it's quite clear when</p> <p>25 one reads further down the letter, after para 3, that the</p>	<p style="text-align: right;">Page 37753</p> <p>1 refers to 1.1 above. I take it somewhere further down</p> <p>2 there'll be something dealing with paragraph 3, the non-PGM</p> <p>3 metals but it's not correct to say that these numbered</p> <p>4 paragraphs or sub-paragraphs only relate to paragraph 3</p> <p>5 dealing with the non-PGM metals because patently at least</p> <p>6 sub-paragraph 1 relates to something said in 1.1, paragraph</p> <p>7 1.1.</p> <p>8 MR CHASKALSON SC: I think the reference</p> <p>9 –</p> <p>10 CHAIRPERSON: I haven't had the advantage</p> <p>11 of reading the document but –</p> <p>12 MR CHASKALSON SC: Sorry, Chair, I might</p> <p>13 be of assistance here. I think the reference Mr Burger is</p> <p>14 looking for is at page 1522, paragraph 1.2(d), "The housing</p> <p>15 and living conditions of the employees have not been</p> <p>16 addressed."</p> <p>17 CHAIRPERSON: I suspected there was</p> <p>18 something like that there and I'm interested to see that my</p> <p>19 suspicion was correct. What paragraph number, Mr</p> <p>20 Chaskalson?</p> <p>21 MR CHASKALSON SC: 1.2(d).</p> <p>22 CHAIRPERSON: 1.2(d), "The housing and</p> <p>23 living conditions of the employees have not been addressed.</p> <p>24 Only three houses of the committed," that's obviously the</p> <p>25 committed 5 500, I take it, "have been built to date." So</p>

<p style="text-align: right;">Page 37754</p> <p>1 Mr Seedat, I don't understand why you say, if I understood 2 you correctly, that you were misled by this letter because 3 the paragraph or sub-paragraph to which you referred didn't 4 quite fit in with what was said in paragraph 3. The reason 5 for that is obvious, isn't it? 6 MR BURGER SC: Chair, that's my mistake. 7 That wasn't the witness's evidence. I queried that 8 paragraph 6 and I did it in the context that it has no 9 relevance in the context on base metals and PMG metals - 10 CHAIRPERSON: That is obviously correct - 11 MR BURGER SC: That may be right or wrong 12 and perhaps I shouldn't say that. 13 CHAIRPERSON: I see. That's obviously 14 correct, okay. Alright, anyway the other problem has been 15 solved - 16 MR BURGER SC: Yes. 17 CHAIRPERSON: - sorry, sorted out and we 18 can now proceed. 19 MR BURGER SC: Yes. Can I just ask you, 20 Mr Seedat, at this stage does the DMR have access to your 21 annual SLP report explaining what was happening on the 22 housing front? 23 MR SEEDAT: Yes, we send them copies 24 every time we produce an annual report. 25 MR BURGER SC: But you answer this letter</p>	<p style="text-align: right;">Page 37756</p> <p>1 volume at page 1653 dated 8 and 9 September 2010. This is 2 now after they've given you a section 39 notice and you've 3 given them a response in August - 8 and 9 September, page 4 1653. 5 CHAIRPERSON: [Microphone off, 6 inaudible.] 7 MR BURGER SC: A section 93 - 8 CHAIRPERSON: I know you just do these 9 from time to time to make sure I'm listening. I've passed 10 the test so far, I hope. 11 MR BURGER SC: And the comment on housing 12 we find at 1662 in the last half on that page, 1662 and 13 it's the last bullet. "Housing provision, employees North- 14 West. A growing number of informal settlements has been 15 identified as a concern by both IDP of Rustenburg and 16 Madibeng Local Municipality and as such WPL will, in 17 collaboration with the tribal authority, municipalities, 18 appropriate government departments, Rand Merchant Bank and 19 other stakeholders, support the housing development and 20 hostel conversion using an institutional model for housing 21 provision with the objectives of enhancing the quality of 22 life for all employees and their families and to support 23 infrastructure programmes as identified in an initiative." 24 Then over the page it says, "Therefore, against this 25 background, it is clear that the housing provision was</p>
<p style="text-align: right;">Page 37755</p> <p>1 now on page 1525 and at page 1538 you deal with housing. 2 5.4.1 you refer to the 5 500 housing, I don't have time to 3 read it all but 5.4.6 you refer to the three show houses, 4 financial matters addressed in 5.4.8. Then you explain, 5 5.4.10 over the page at 1539, why the targets had not been 6 achieved. 7 MR SEEDAT: Ja, I mentioned these things 8 before. Perhaps the comment I can make is, what was put 9 into the response to the DMR was no different to what we 10 had told them previously when they visited the mine and did 11 the audit. 12 MR BURGER SC: What became of this 13 section 93 query? 14 MR SEEDAT: We responded to the query, as 15 you see, and we heard nothing back. 16 MR BURGER SC: To this day? 17 MR SEEDAT: To this day. 18 CHAIRPERSON: What is the date of your 19 response? 20 MR BURGER SC: 31st August 2010, sir. 21 CHAIRPERSON: Thank you. 22 MR SEEDAT: 3rd August 2010. Sorry, 31st, 23 apologies. 24 MR BURGER SC: We do get a DMR report two 25 months later in September of 2010. That you find in this</p>	<p style="text-align: right;">Page 37757</p> <p>1 meant to benefit the employees and the community members. 2 Budget committed" and then they give the budget for 2007. 3 Now you haven't seen this before but do you have any 4 reaction to this in this time frame? 5 MR SEEDAT: Yes, I mean the wording is a 6 carbon copy of the wording of the report that was done a 7 year earlier, 21st to 22 September 2009 on page 1606 and in 8 between you had the issuing of that section 93 letter, 9 which seems to have been done in isolation with these 10 reports. 11 [14:33] MR BURGER SC: We know that a week later 12 the new charter comes out in 2010 and the next DMR report 13 we find is in August 2011. That's in the same bundle, page 14 1694. I'm just really going to the relevant page. The 15 document itself starts earlier. 16 CHAIRPERSON: It looks like the relevant 17 paragraph - 18 MR BURGER SC: The document starts at 19 1681 - 20 CHAIRPERSON: It looks like the relevant 21 paragraph is 2.2.5. 22 MR BURGER SC: Correct, 2.2.5. Housing 23 provision, and it says, "The project has not been 24 implemented although it was going to serve employees' needs 25 in terms of housing and living conditions."</p>

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1 MR SEEDAT: That's right.

2 MR BURGER SC: Do you have a debate with

3 the DMR in this timeframe? Do they know what's happening

4 on the ground?

5 MR SEEDAT: Well, they come to the mine

6 and we accompany them and we fully brief them on what's

7 going on, so they clearly know what's going on. They don't

8 necessarily engage in debate, and then this report is

9 produced, which we don't have sight of. But perhaps I

10 should take you to page 1698 because it expands there on

11 housing and living conditions and on what their

12 expectations are under section 2.4, 1698.

13 MR BURGER SC: 1698 towards the second-

14 half of the page, and I'll just read the last paragraph,

15 "Measures and strategies have been revised to ensure

16 facilitation of homeownership, particularly locally, North

17 West Rustenburg. However, for employees coming from labour

18 sending areas, Eastern Cape, and wishing/wanting to own

19 home there the company does not have a plan in this

20 regard." Now have they ever raised with you that you

21 should start building houses in the Eastern Cape?

22 MR SEEDAT: Not to my knowledge.

23 MR BURGER SC: Have they ever objected to

24 what was happening in 2010 and 2011 on the provision of

25 housing to employees by Lonmin?

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1 MR SEEDAT: No.

2 CHAIRPERSON: Have you ever been to

3 Nkaneng?

4 MR SEEDAT: Yes.

5 CHAIRPERSON: Have you seen the houses

6 there?

7 MR SEEDAT: Yes, yes.

8 CHAIRPERSON: You've seen the lack of

9 basic services?

10 MR SEEDAT: Yes.

11 CHAIRPERSON: Have you seen the quality

12 of life that the people must be having to endure while

13 there?

14 MR SEEDAT: Yes.

15 CHAIRPERSON: Did you do that during the

16 period before August 2012?

17 MR SEEDAT: Yes, we did it before that.

18 I also recall that when the board came to – the board has

19 two meetings every year in South Africa and they meet at

20 the mine and I recall taking board members when I was an

21 EXCO member to those townships as well.

22 CHAIRPERSON: Were you proud of the

23 housing conditions that your workers were enduring?

24 MR SEEDAT: Chairman, absolutely not, and

25 that's why as you can see we've put a lot of effort in

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1 trying to find a solution and we, although I'm not a member

2 of Lonmin anymore, I personally have some thoughts – some

3 people may find them unacceptable, but I do believe a

4 solution is possible. If I may expand, your reference

5 point is a person living in a shack, a single shack, pays

6 R500 a month rental and a person living in a married shack

7 pays R800 a month rental. That is a reference point.

8 So whatever you do, you have to come up with a

9 solution that matches what they're currently paying but

10 provides them with much better accommodation, and we have

11 to find creative ways of achieving that objective because

12 although they get a housing allowance currently of around

13 R1 875, if I remember correctly, they are not prepared to

14 use more of that allowance towards rental. That's fact.

15 So we have to come up with a creative solution and we have

16 to really think carefully about how we can come up with a

17 solution. The current situation absolutely is

18 unacceptable. We have to think creatively how we find a

19 better solution.

20 Having said that, it started during my tenure and

21 it still continues; Lonmin does refuse removal in those

22 townships. It also does it in Mooinooi, by the way, which

23 is part of the Madibeng Municipality, and in spite of rates

24 being paid Lonmin still does water provision, sewage

25 services and other services for the township.

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1 CHAIRPERSON: Mooinooi, we drove through

2 Mooinooi, those are sort of middle-class –

3 MR SEEDAT: That's right.

4 CHAIRPERSON: - houses, isn't that right?

5 MR SEEDAT: That's right. But the point

6 I'm making is that Lonmin is going beyond its obligation.

7 Even though rates are paid on those properties Lonmin at

8 its cost is providing the services which is supposed to be

9 provided by the municipality.

10 MR BURGER SC: You've referred to the

11 housing allowance. When was that introduced?

12 MR SEEDAT: That was introduced in 1999.

13 It was at the request of the unions and obviously it was,

14 NUM was the majority union at the time, and it has been

15 implemented since 1999, and if I may, I did a calculation

16 of the total value of housing allowance paid since 1999 to

17 date. All categories of employees the number is around

18 R3.4 billion and if you take the category 328, which is the

19 vast majority of employees, we've paid around R3 billion in

20 housing allowances since 2000.

21 MR BURGER SC: What is the contribution

22 of the Madibeng Municipality to their housing obligations

23 as a local authority?

24 MR SEEDAT: Well, as I mentioned earlier,

25 I mean they have done, there's no development being done by

<p style="text-align: right;">Page 37762</p> <p>1 them to cater for the category 328 employees, the less-</p> <p>2 advantaged employees, and as far as Mooinooi is concerned,</p> <p>3 which is incorporated into the Madibeng Municipality, even</p> <p>4 though property rates are being paid to the municipality,</p> <p>5 Lonmin is still at its cost providing the services in terms</p> <p>6 of water, sewage and general maintenance.</p> <p>7 CHAIRPERSON: Does the Madibeng</p> <p>8 Municipality have any obligations under the SLP?</p> <p>9 MR SEEDAT: I'm not sure, Chairman. Not</p> <p>10 sure.</p> <p>11 MR BURGER SC: On page 1703 in volume 4,</p> <p>12 it is still in the report by the DMR, housing and living</p> <p>13 conditions, and again the idea that a plan should be</p> <p>14 devised on how to do –</p> <p>15 CHAIRPERSON: I'm sorry, we haven't seen</p> <p>16 1703. We saw the recommendation on 1704 –</p> <p>17 MR BURGER SC: I'm so sorry.</p> <p>18 CHAIRPERSON: - but perhaps we should</p> <p>19 look at – it's not your fault, Mr Burger. If we look at</p> <p>20 1703, there, I think we've now got the, yes, the relevant</p> <p>21 paragraph reads, "Housing and living conditions. The</p> <p>22 company must ensure alignment with the new mining charter</p> <p>23 targets and the compliance as set thereof." I suppose it</p> <p>24 means set therein, and then the paragraph, similarly worded</p> <p>25 to the one we saw earlier, "A plan on how homeownership for</p>	<p style="text-align: right;">Page 37764</p> <p>1 are they in chronological order or is there an index?</p> <p>2 Because you know, I foresee difficulty for us to master</p> <p>3 these documents in a short period unless there's an index</p> <p>4 or the documents are in chronological order, but perhaps</p> <p>5 you can't answer that now, but if you can perhaps address</p> <p>6 it when we adjourn.</p> <p>7 MR BURGER SC: Chair, the first four</p> <p>8 volumes are in a chronological order and they have an index</p> <p>9 and that's the way I follow them through.</p> <p>10 CHAIRPERSON: Thank you. That addresses</p> <p>11 my concern.</p> <p>12 MR BURGER SC: Then during preparation we</p> <p>13 discovered more documents, for example we for the first</p> <p>14 time had a copy of the new strategy from this witness.</p> <p>15 That's in volume 5. So volume 5 is a type of an omnibus</p> <p>16 volume right at the end, but I think what we –</p> <p>17 CHAIRPERSON: It's really an addendum,</p> <p>18 really. But if there's an index at the front of it</p> <p>19 obviously we'll be able to handle it. If there isn't -</p> <p>20 with dates of course. If there isn't, I hope someone of</p> <p>21 the industrious members of your team will compile an index</p> <p>22 for us.</p> <p>23 MR BURGER SC: No, there's a very nicely</p> <p>24 blue-coloured index in volume 1.</p> <p>25 CHAIRPERSON: Does that include the</p>
<p style="text-align: right;">Page 37763</p> <p>1 labour sending areas employees, Eastern Cape,</p> <p>2 wanting/wishing to own home in Eastern Cape must be</p> <p>3 developed." That's that paragraph. We now look at the</p> <p>4 next page, do we, for the recommendation?</p> <p>5 MR BURGER SC: Ja, I wasn't going to</p> <p>6 refer to that – oh, I see, 1704, let's have a look at that.</p> <p>7 1704, this is now by the –</p> <p>8 CHAIRPERSON: We've looked at 1704, we</p> <p>9 looked at the recommendations. "It is recommended that the</p> <p>10 concerns outlined in the abovementioned conclusion must be</p> <p>11 addressed and others be," I suppose that should be taken</p> <p>12 into account, "in the next social and labour plan, thereby</p> <p>13 ensuring proper implementation that will bring about</p> <p>14 transformation within the industry and towards sustainable</p> <p>15 socioeconomic development as envisaged by the MPRDA."</p> <p>16 MR BURGER SC: When did you see this</p> <p>17 report for the first time, Mr Seedat?</p> <p>18 MR SEEDAT: During preparation.</p> <p>19 MR BURGER SC: Lonmin then files a close-</p> <p>20 out report on the SLP and that we find in volume 3 at page</p> <p>21 1059. Bear with me, Chair.</p> <p>22 CHAIRPERSON: While you do that, can I</p> <p>23 ask you a question, Mr Burger? You have told us that we'll</p> <p>24 be delivered copies of these files in due course. May I</p> <p>25 ask, are the documents bound or are they just filed, and</p>	<p style="text-align: right;">Page 37765</p> <p>1 volume 5 documents too? I think what I said wasn't</p> <p>2 recorded –</p> <p>3 MR BURGER SC: It does. It does.</p> <p>4 CHAIRPERSON: So the volume 1 index</p> <p>5 therefore includes the documents in volume 5. That</p> <p>6 satisfied my difficulty, thank you.</p> <p>7 MR BURGER SC: We are living by the skin</p> <p>8 of our teeth on this, but it's been done and there it is.</p> <p>9 You'll have it tomorrow morning, Chair. I was looking –</p> <p>10 CHAIRPERSON: It's more as if you're</p> <p>11 flying by the seat of your pants, but we won't go there</p> <p>12 now.</p> <p>13 MR BURGER SC: Volume 3, page 1059, is</p> <p>14 the overview filed, the overview for the period 2006 to</p> <p>15 2010, and in paragraph 3.2 on page 1059 we deal with</p> <p>16 housing and living conditions, and Mr Seedat, we don't</p> <p>17 really see anything new here. It's really explaining and</p> <p>18 bringing up to date what has happened.</p> <p>19 MR SEEDAT: That's right.</p> <p>20 MR BURGER SC: Explanation of the key</p> <p>21 factors why we couldn't achieve the target. Can I ask you,</p> <p>22 could you work out where this 5 500 houses target comes</p> <p>23 from?</p> <p>24 MR SEEDAT: Yes, obviously it was done</p> <p>25 before I got to Lonmin, but in preparing for this</p>

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1 Commission I did a bit of research and the only thing I can
2 find linked to this 5 500 houses is that when they started
3 with this exercise there was a waiting list of employees
4 who wanted houses of around 5 000 employees. So I guess
5 they decided to add a 10% margin and decided to provide for
6 5 500 houses.

7 However, the question that was never answered is
8 that you've got around 23 000 own employees, you've got
9 around another 13 000 contract employees; if you take care
10 of the 5 500 plus those you're already housing in houses,
11 plus those that are going to remain in the hostel, my
12 estimate is that you'd still be looking to accommodate a
13 further 13 000 employees, and that's not covered in any of
14 this. So a commitment was made, and perhaps it was
15 intended to be done after 2014, I don't know, but I can't
16 find reference anywhere of how we were going to accommodate
17 all of the employees at Lonmin.

18 CHAIRPERSON: May I ask you a question
19 which flows essentially from what you said; how many
20 people, how many workers were employed in the hostel blocks
21 before the conversion started?

22 MR SEEDAT: It was the time –

23 CHAIRPERSON: Sorry, I used the wrong
24 wording. How many were accommodated, I think I should have
25 said. How many workers were accommodated – I used the

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1 wrong word – accommodated in the hostel blocks before the
2 conversion started?

3 MR SEEDAT: Chairman, the number that
4 comes to the top of my head is around 14 000.

5 CHAIRPERSON: Alright, now one of the
6 things we saw when we did an inspection in October 2012 was
7 that there, I think the single rooms in the hostels each
8 accommodated eight people and there were double, the larger
9 rooms accommodated 16, and we then went into converted
10 hostel blocks, which I must say were, had been very well
11 done and made a very favourable impression, and family
12 units there, which were the old double rooms really,
13 accommodated a worker and his family and then there were
14 also smaller units in the converted hostels and those
15 essentially accommodated one person each. So it was clear
16 therefore that the conversion of the hostel reduces the
17 housing stock by 7/8ths. That's correct, isn't it?

18 MR SEEDAT: Ja.

19 CHAIRPERSON: So you then got all these
20 other people, 7/8ths, say 14 000 who need to be
21 accommodated, and you say that problem wasn't properly –
22 well I suppose some of the 5 000 who wanted houses were in
23 the hostels, so what it means though is that 7/8ths of
24 14 000 minus 5 000 is the figure of people who would
25 effectively lose their accommodation in the hostels, but

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1 not be available to stay in houses that were being built as
2 part of the plan. That's correct, isn't it?

3 MR SEEDAT: That's correct, but if you
4 look at the original SLP that problem you mentioned is
5 anticipated. It is mentioned in the SLP that when you
6 dedensify you're going to have the following problem and it
7 talks of potential solutions because one of the
8 infrastructure benefits is that when you dedensify the
9 hostel the strain on the water system, the strain on the
10 sewer system, electricity, is a lot less, and the SLP talks
11 about a plan to put up additional housing adjacent to those
12 hostels to take advantage of those. But it says we still
13 have to work through all of them. So it was a bit
14 ambiguous about exactly what was going to happen, but it
15 did anticipate this problem coming.

16 CHAIRPERSON: So would it be fair to say
17 that what it means is that you had obligations to do
18 things. These obligations were assumed in exchange inter
19 alia for the, they were assumed in exchange for new order
20 mining rights, amongst other things. That's
21 simplification, but that's in substance correct. The
22 obligations which you assumed did not include these other
23 houses which were merely envisaged as requiring to be
24 built, but they weren't part of the obligations you
25 assumed. Would that be correct?

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1 MR SEEDAT: Well, even the 5 500
2 obligation was for Lonmin to facilitate, not to build, but
3 yes –

4 CHAIRPERSON: Okay, there may be a debate
5 about that, but apart from the obligations you assume,
6 whatever they may mean, there was also envisaged that other
7 houses would have to be built –

8 MR SEEDAT: Yes.

9 CHAIRPERSON: - to make up for this, the
10 reduction in housing stock brought about by the conversion
11 of hostels, but in respect of that shortfall, except for
12 insofar as was provided for by the 5 500, there was no
13 obligation assumed by Lonmin. I think that would be fair,
14 would it?

15 MR SEEDAT: Correct.

16 CHAIRPERSON: Ja, thank you. Sorry, Mr
17 Burger.

18 MR BURGER SC: While we talk of numbers
19 of workers, can we just get a bit of perspective here; if
20 you go to Dr Forest's report in volume 3 at page 1340, you
21 see there she shows us the Lonmin labour force by labour
22 sending area in 2013. Let's just assume that this is still
23 valid for 2012, which it probably is. You'll see that the
24 foreign component there, the component of foreign workers
25 would include Mozambique, Lesotho, Zimbabwe, Botswana,

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1 Swaziland. I've calculated it, it's about 19.2% - round it
 2 off to say 19% of the workforce would be foreign labour.
 3 MR SEEDAT: Yes.
 4 MR BURGER SC: Then North West province,
 5 those are the people living in the area, coming from there,
 6 27.4%.
 7 MR SEEDAT: Could I make a comment on the
 8 North West employees –
 9 MR BURGER SC: Please do. Please do.
 10 MR SEEDAT: - because we did have a
 11 debate about who's the migrant worker, because you do have
 12 people who come from North West who are not resident in the
 13 mining area. They still seat their families back 80
 14 kilometres away, 100 kilometres away, so they also end up
 15 migrating between their place of work and the place of
 16 permanent residence, and I remember when I visited the
 17 hostels when they were converted I visited one employee and
 18 he had a family unit, and I said but you're living here
 19 alone. He says ja, my family is 80 kilometres away,
 20 they're staying there. So I said why do you need a family
 21 unit. Oh, in case they come and visit me here. So even
 22 within that 27.4% there's a significant component that will
 23 need rented accommodation because they are essentially also
 24 migrant.
 25 MR BURGER SC: Then we have a very large

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1 percentage coming from the Eastern Cape, 36.4%.
 2 [14:53] What I want to ask you is where would you, if you
 3 had notionally 5 500 houses which would be your typical
 4 market to occupy those houses in these three categories,
 5 the three major categories.
 6 MR SEEDAT: I'm not sure I understood
 7 your question.
 8 MR BURGER SC: You have to allocate 5500
 9 houses –
 10 MR SEEDAT: Okay.
 11 MR SEEDAT: Do you allocate it to foreign
 12 workers, to Eastern Cape workers, to North West workers or
 13 do you do it on a pro rata basis or how do you do that?
 14 MR SEEDAT: It's done on a waiting list
 15 basis. There's a waiting list that is compiled in
 16 consultation with the unions, it's like they participate in
 17 managing the waiting list and whoever's next on the waiting
 18 list will be given a house which is all employed equally.
 19 And it's purely where they are on the waiting list that
 20 determines when they get a house.
 21 MR BURGER SC: And remind us what is your
 22 contingent, your employee contingent workers, contract
 23 workers?
 24 MR SEEDAT: Okay own employees is around
 25 23 000 and contract is around 13 000 if my memory serves me

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1 correctly.
 2 MR BURGER SC: 13 000. Now in that
 3 workforce 23 000 permanent and 13 000 contract, in an ideal
 4 world how many housing units would you require?
 5 MR SEEDAT: I will have to have a look at
 6 the doc because yes there are quite a few employees who
 7 live in the area, who come from the area so you've got to
 8 exclude them.
 9 MR BURGER SC: Yes.
 10 MR SEEDAT: There are others who have
 11 moved into the area and bought their own units. It's going
 12 to be a rough guess because I don't have any numbers in
 13 front of me, but I would guess probably about 80% of those
 14 employees will require houses.
 15 MR BURGER SC: What I want to ask you is
 16 assume for the moment 80% of your permanent employees
 17 require housing and you've got 5 500 housing where do the
 18 other 15 000 go?
 19 MR SEEDAT: Well that's what I said
 20 earlier, it's a big challenge. The 5 500, in fact if we
 21 had done the 5 500 homes I think we would have in some way
 22 exacerbated the situation because you'd have employees
 23 feeling relatively deprived and wanting to know when are we
 24 going to have additional houses available for them. So if
 25 you solve this problem then you have to solve it for all

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1 the employees and not just a percentage of them.
 2 CHAIRPERSON: Sorry before you carry on,
 3 what percentage of your employees, we'll look at your own
 4 employees and the contract people in a moment, what
 5 percentage of your employees were accommodated in hostels
 6 before the conversion program began?
 7 MR SEEDAT: Well as it is, Chairman, I
 8 think there's around 14 000 employees, so roughly over 60%,
 9 roughly over 60%. It's a rough guess, I –
 10 CHAIRPERSON: Yes, no we're talking
 11 ballpark figures and then of those, it may be an unfair
 12 question, of those people what percentage were permanent
 13 employees and what percentage were contract employees or
 14 did you not consider it your duty to accommodate contract
 15 employees. It may be that the sub-contractor for whom they
 16 were working was responsible for accommodation. What was
 17 the position in that regard?
 18 MR SEEDAT: Well that is correct. We
 19 accommodated our own employees in the hostels.
 20 MR BURGER SC: And Mr Seedat, where do
 21 these 13 000 contract workers go after the shift now?
 22 MR SEEDAT: Various options, some have –
 23 you know some go into the settlement, so the contractor
 24 relies on them finding their own employment, others have
 25 established camps and others commute either from Rustenburg

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1 or from Gauteng.

2 MR BURGER SC: We were looking at the DMR

3 reports for that relevant period. The next one we find is

4 April 2012 and that is in volume 4 at page 1705. We'll see

5 from the foot of the page it's April 2102 and at page 1706

6 right at the foot housing is addressed.

7 CHAIRPERSON: Forgive my ignorance, what

8 does IDP stand for?

9 MR SEEDAT: I think it's Interaction

10 Development Plan.

11 CHAIRPERSON: Thank you.

12 MR BURGER SC: Any comment on this

13 narrative?

14 MR SEEDAT: It's the same as what we've

15 seen in the previous reports in the previous years.

16 MR BURGER SC: And 1716 towards the end

17 of that report The Housing and Living Conditions.

18 Presumably if there's reference to a target to be achieved

19 in 2014 what would be that target in reality?

20 MR SEEDAT: Well as far as hostel

21 conversions are concerned we would have achieved that

22 target. We will have converted all the hostels by the end

23 of this calendar year, but as far as the building or

24 facilitating the building of houses apart from the three

25 show houses we don't have much more to show.

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1 CHAIRPERSON: And the target isn't going

2 to be achieved by the end of this year, the two targets

3 aren't going to be achieved by the end of this year.

4 MR SEEDAT: No the one will, the hostels

5 will.

6 CHAIRPERSON: The hostels one, yes. That

7 of course brings a corresponding reduction in the housing

8 project. But the houses themselves those – by the end of

9 the year you're still only going to have three.

10 MR SEEDAT: Ja.

11 CHAIRPERSON: I see.

12 MR BURGER SC: I'm not sure that that

13 grammar – that grammar is awkward as it is, but that's a

14 unitary target, not a deal one. I would argue at the end

15 of the day that that target refers only to the hostels.

16 The Department must know it by now if they've read the

17 paper.

18 CHAIRPERSON: "Due to the impact of

19 global economic crisis and the financial position of the

20 company, 5 500 houses target and conversion of 124 hostels

21 by this year 2011 the target will not be achieved, but by

22 2014." I would have thought the grammar seems to indicate

23 that the total target will not be achieved. Well maybe the

24 answer is that the conversion of the hostels will be

25 achieved by the end of 2014 which is what the witness says.

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1 But the target as so described, the 5 500 houses target

2 isn't going to be achieved and the witness tells us if that

3 was the prediction it was correct because they're only

4 going to have three houses by the end of the year. Is that

5 right?

6 MR BURGER SC: Then we have another

7 report, we don't know where it comes from, at 1717 –

8 CHAIRPERSON: Mr Burger, I see it's now 3

9 o'clock. If you'd like to take the tea adjournment we

10 will. If you'd like to carry on I'm in your hands.

11 MR BURGER SC: No we'll take the tea –

12 CHAIRPERSON: Thank you, Mr Burger. 15

13 minutes.

14 [COMMISSION ADJOURNS COMMISSION RESUMES]

15 [15:18] CHAIRPERSON: The commission resumes.

16 Mr Seedat, you're still under oath. Mr Burger?

17 MR BURGER SC: Thank you, Chair. Mr

18 Seedat, we were looking at the last report from the DMR in

19 volume 4 at page 1717 dated 3rd of April 2012 and it deals

20 with housing at page 1726 in paragraph 5.4. Will you read

21 that and just give us any comment you have please? 1726,

22 paragraph 5.4.

23 MR SEEDAT: Essentially the narrative

24 there is very similar if not exactly the same as it's in

25 the previous reports.

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1 CHAIRPERSON: Do you know what the

2 ASGISA initiative is?

3 MR SEEDAT: Not. It's a government

4 initiative but I can't, I don't know what that acronym

5 stands for.

6 CHAIRPERSON: We can find out if you

7 don't know.

8 MR BURGER SC: It was the successor to

9 GEAR I think. It was the government economic strategy,

10 ASGISA.

11 CHAIRPERSON: I see, thank you.

12 MR BURGER SC: You can put that file away

13 now, Mr Seedat, and let's go back to Dr Forest in volume 3.

14 I just want to ask you in the light of this for comments on

15 some of the statements she makes and in this statement

16 you'll find in volume 3 at page 1365 and if you read the

17 first bullet there and if you have any comment she says,

18 "Lonmin's unilateral repudiation of its housing and hostel

19 commitments was not accepted by the DMR." And then she

20 refers to that section 93 letter you received.

21 MR SEEDAT: Yes, I wouldn't say Lonmin

22 had unilaterally repudiated its housing and hostel

23 commitments. As far as the hostel commitments are

24 concerned we're on track to deliver by the end of 2014.

25 There were financial constraints over a couple of years and

<p style="text-align: right;">Page 37778</p> <p>1 those – since then we have ensured that even if we have 2 cash constraints we still press ahead with the hostel 3 conversion. As far as its housing commitment is concerned 4 as I've indicated since April 2007 when the conversion 5 happened we have tried numerous ways to try to achieve the 6 objective of having decent accommodation for employees and 7 our internal commitment is to house all the employees who 8 are not just the 5 500 so sadly with all of our efforts we 9 still haven't come up with a solution that works for 10 employees and works for us and works for the banking 11 institutions who ultimately will have to finance it, so 12 it's not a unilateral repudiation.</p> <p>13 MR BURGER SC: Do you think the section 14 93 letter was triggered by a housing commitment in the SLP?</p> <p>15 MR SEEDAT: I don't have a conspiracy 16 theory but it was quite unusual in the way it arrived and 17 the references it had to the other non-mine or non-SLP 18 issues especially around the associated minerals.</p> <p>19 CHAIRPERSON: That was only paragraph 3 20 about the non-PGM metals.</p> <p>21 MR SEEDAT: Yes.</p> <p>22 CHAIRPERSON: And there were a lot of 23 other things in the earlier paragraphs.</p> <p>24 MR SEEDAT: I acknowledge there were 25 others but, Chairman, it was the first time the issue</p>	<p style="text-align: right;">Page 37780</p> <p>1 not have addressed the problems of the majority of our 2 migrant employees. And in terms of discharging the housing 3 obligation the SLP is quite clear that Lonmin's duty, are 4 committed to facilitate and work with financial 5 institutions and in spite of its best efforts it did not 6 achieve the desired objective.</p> <p>7 MR BURGER SC: In one of the reports Dr 8 Forest asked and she does not refer to it in her report but 9 we've seen it, there is a thumbnail sketch of the schools 10 in the Marikana area and they're not sufficient. Can I 11 just ask you if you add 5 500 families in that area with 12 the kids they bring along how would that be accommodated 13 with the, by the education system?</p> <p>14 MR SEEDAT: Well, that's one of the 15 issues we addressed in our integrated social housing 16 development plan because we recognise that by enabling 17 employees to bring their families we would create not only 18 challenges around schooling but there would be challenges 19 around clinics, around shopping, all the infrastructure 20 issues that go with managing a township so in that 21 document, the integrated human settlement strategy, we 22 tried to address those issues as well in the way we do the 23 layouts and trying to ensure that we avoid some of these 24 other problems that come later on down the line.</p> <p>25 CHAIRPERSON: May I ask you a question</p>
<p style="text-align: right;">Page 37779</p> <p>1 around the associated minerals was raised as a concern.</p> <p>2 MR BURGER SC: Did your response elicit 3 any debate from the DMR?</p> <p>4 MR SEEDAT: No, as I indicated earlier we 5 submitted our response and we heard nothing. We then got 6 the report about a month or two – no, we didn't get it but 7 we've seen it now. And no mention of the section 93 is 8 made in that report dated I think around September 2011.</p> <p>9 MR BURGER SC: Was that debate with the 10 ex-director then resolved?</p> <p>11 MR SEEDAT: Yes, it was. We eventually 12 came to a commercial settlement which the board felt was in 13 the best interest of the company.</p> <p>14 MR BURGER SC: Another comment of hers we 15 find at page 1366, that's the next page of the report, 16 right at the foot. I'd like your comment for that. The 17 last four lines she says, "So quite apart from what one 18 would ordinarily expect from government in terms of housing 19 provisions within the Marikana area Lonmin was itself 20 obliged to discharge these housing obligations in its 21 social and labour plans and had it done so most of its 22 migrant employees would've been provided with decent 23 housing a year before the tragedy."</p> <p>24 MR SEEDAT: Well, I think if I deal with 25 the latter part first, 5 500 as I indicated earlier would</p>	<p style="text-align: right;">Page 37781</p> <p>1 based on the quotation that I see here in the passage in 2 the report which is on the screen, the four lines on the 3 top of the screen? Mr Phillimore stated in his speech to 4 the Lonmin AGM of 31 January 2013, "Lonmin has a duty to 5 its employees to ensure that they "have access to decent 6 accommodation and the essential utilities for fresh water, 7 proper sanitation and electricity."" Do you agree with 8 what Mr Phillimore said in that regard?</p> <p>9 MR SEEDAT: Absolutely. There's never 10 been doubt in my mind that since I've been on the board and 11 when I was an executive committee member and I attended 12 board meetings the board did feel very strongly about this 13 commitment to house our employees in an adequate and 14 acceptable way so that obligation was always recognised.</p> <p>15 CHAIRPERSON: The obligation may be 16 recognised but would you say that Lonmin has discharged its 17 duty to its employees to ensure that they "have access to 18 decent accommodation and the essential utilities of fresh 19 water, proper sanitation and electricity"?</p> <p>20 MR SEEDAT: Clearly, Mr Chairperson, 21 until you house all 23 000 of your employees adequately 22 you're not going to –</p> <p>23 CHAIRPERSON: Once you recognise a duty, 24 duty means it's something you've got to do, right.</p> <p>25 MR SEEDAT: Yes.</p>

<p style="text-align: right;">Page 37782</p> <p>1 CHAIRPERSON: And you admit you haven't 2 done it.</p> <p>3 MR SEEDAT: Well, we haven't delivered 4 the houses but we've done a lot in trying to get there but 5 our efforts have not delivered any –</p> <p>6 CHAIRPERSON: Well, I don't know what 7 the percentage is but a substantial number of your 8 employees I understand have not enjoyed, and I take it 9 still today, would that be correct, do not have access to 10 decent accommodation and the essential utilities of fresh 11 water, proper sanitation and electricity. That's correct?</p> <p>12 MR SEEDAT: Those living in informal 13 settlements clearly don't have those essential utilities.</p> <p>14 CHAIRPERSON: That's right.</p> <p>15 MR SEEDAT: Absolutely right.</p> <p>16 CHAIRPERSON: Now, these are the people 17 who when working at full capacity produce I think it is a 18 R1 million worth of platinum every day.</p> <p>19 MR SEEDAT: In total throughout the whole 20 site depending on the platinum price Lonmin's daily 21 turnover, turnover -</p> <p>22 CHAIRPERSON: Yes, I said produce, I 23 said turnover.</p> <p>24 MR SEEDAT: About R50 million a day.</p> <p>25 CHAIRPERSON: How much?</p>	<p style="text-align: right;">Page 37784</p> <p>1 – South Africans have been very creative when they've been 2 faced with a crisis and I believe that if we apply our 3 minds we will come up with a solution that meets these 4 conditions of essential utilities, etcetera but also is a 5 financially viable solution.</p> <p>6 CHAIRPERSON: Why do you have to shackle 7 yourselves to comply with the benchmark which may be 8 unrealistic if you recognise that you have this duty 9 expressed here in this report?</p> <p>10 MR SEEDAT: Well, if I understand you 11 correctly, sir, the problem is that if you put up a unit 12 and let's say you're going to charge for a single unit R800 13 the shacks are still going to be available and the employee 14 who is financially squeezed and wants to send as much money 15 possible back to his home is probably still going to take 16 that option. So we have to face that reality. Renting out 17 of shacks is a reality in these areas. We have to find a 18 value proposition for the employees that says I'm prepared 19 to move across, it's not going to cost me anything. It's 20 not going to cost me much.</p> <p>21 CHAIRPERSON: At the moment I think I've 22 heard it said that, or I read it in one of the reports, 23 that the attitude is, well, they have a choice. They can 24 accept the living out allowance and they don't have to 25 accept it, they can – they don't have to live in a shack.</p>
<p style="text-align: right;">Page 37783</p> <p>1 MR SEEDAT: 50 million if all of the 2 shafts are operating.</p> <p>3 CHAIRPERSON: R50 million a day?</p> <p>4 MR SEEDAT: In turnover.</p> <p>5 CHAIRPERSON: In turnover, yes, that's 6 what they produce, the value.</p> <p>7 MR SEEDAT: Yes.</p> <p>8 CHAIRPERSON: And despite that they 9 don't have the majority I take it don't have access to 10 decent accommodation and essential utilities of fresh 11 water, proper sanitation and electricity?</p> <p>12 MR SEEDAT: Yes.</p> <p>13 CHAIRPERSON: I understand, thank you.</p> <p>14 MR BURGER SC: What's the answer to that, 15 Mr Seedat, if there is an answer?</p> <p>16 MR SEEDAT: Well, as I mentioned earlier, 17 I mean, we've consulted widely, we've looked at different 18 options. We even looked at overseas solutions but 19 nothing's come out that clearly solves this problem, so as 20 I said earlier we need to think creatively about this 21 ourselves. And the starting point is the current 22 benchmark. R500 for a single unit shack and R800 for a 23 family unit shack. What can we build that is financially 24 viable that if somebody - go and do it with those rentals 25 he would get a reasonable return? And I think if you apply</p>	<p style="text-align: right;">Page 37785</p> <p>1 It's their choice to do so but is that correct? That is an 2 attitude that's been expressed.</p> <p>3 MR SEEDAT: No, Chairman, I would – 4 certainly in the discussions I've had we've recognised that 5 the densification of the hostel has in some ways forced the 6 employees to take the allowance and find their own 7 accommodation, and it's not that because they've taken the 8 allowance it's not a problem anymore.</p> <p>9 CHAIRPERSON: The problem, sorry, 10 forgive me, sorry.</p> <p>11 MR SEEDAT: This also makes business 12 sense because we have recognised that when you have 13 employees living in these informal conditions in winter 14 when the - or ventilation is poor, they have to light their 15 own fires, make their own meals, they cannot come to work 16 in a condition that is optimal for their performance, so it 17 makes business sense as well.</p> <p>18 CHAIRPERSON: Yes, I understand. Part 19 of the problems is of course if I was a worker in your, in 20 one of your mines and I took a living out allowance I take 21 it I'd only be able to get a shack, wouldn't I? There 22 aren't, there isn't other alternative accommodation 23 available for me.</p> <p>24 MR SEEDAT: Not currently but I would 25 guess if people are prepared to pay a higher rental then</p>

<p style="text-align: right;">Page 37786</p> <p>1 you would possibly find better quality units if people are 2 prepared to hire units. 3 CHAIRPERSON: Where? 4 MR SEEDAT: Well, you get entrepreneurs 5 who'll do it. 6 CHAIRPERSON: Sorry? 7 MR SEEDAT: You will get entrepreneurs – 8 CHAIRPERSON: Ja, but at the moment it 9 doesn't exist. 10 MR SEEDAT: No, it doesn't exist. 11 CHAIRPERSON: I would have to wait for 12 an entrepreneur somewhere to build a block of flats or 13 build some housing estate for me to stay in which isn't the 14 case at the moment. 15 MR SEEDAT: Yes. 16 CHAIRPERSON: I see. 17 COMMISSIONER HEMRAJ: So to date there's 18 no solution to this housing problem, no viable solution. 19 MR SEEDAT: No obvious solution but there 20 are I believe potential solutions that we can apply and 21 have a benefit not only for the employees but create 22 business opportunities for entrepreneurs in the local 23 community. I'll share this example with you and I do it a 24 little hesitantly because when I've mentioned it to other 25 people and I've shared these thoughts with the treasury</p>	<p style="text-align: right;">Page 37788</p> <p>1 U-shaped format in a proper secure area, you provide 2 walkways, you provide insulation inside these units, proper 3 insulation. If you ever have time on your iPad just put 4 down containers to convert it to houses and you will see 5 the wonderful things people have done around the world in 6 it. 7 CHAIRPERSON: They can, I know they also 8 convert containers into school classrooms and so on. 9 MR SEEDAT: Yes. 10 CHAIRPERSON: Quite successfully. It's 11 a wonderful idea. If it had been implemented in 2010 12 then of course a lot of the problem would've disappeared 13 and – 14 MR SEEDAT: Well, Chairman, one of the 15 problems is the psychological acceptance of the container 16 because some people's reaction is horror. You're putting 17 them in a steel cage. And obviously we are concerned when 18 we thought and when we discussed this that there will be 19 people out there who will rubbish this rather than saying 20 let's hear how we can make it work and that's where there's 21 been a hesitancy to try to make this work. We did approach 22 – in fact just outside Pretoria there's a place with 23 zillions of containers I'm told and we approached them but 24 I suspect there are some opportunities and they quoted us 25 around R100 000 for a converted container.</p>
<p style="text-align: right;">Page 37787</p> <p>1 general of the ANC, I've shared it with the previous deputy 2 chairman, deputy president of the country, the initial 3 reaction is horror but after doing some basic research they 4 realise that there's a potential opportunity here and I'll 5 share it with you and clearly it needs more work, and I'll 6 start off by saying if you drive on the N1 north on the 7 double-decker and if you look to the left you'll see 8 student accommodate there which is silos that have been 9 converted. And on top of the silos, and this is the point, 10 are containers, containers that are properly converted into 11 accommodation units. 12 We did a bit of research on this and you can buy 13 a second-hand container for around R50 000. And let's say 14 you spend another R30 000. These are general numbers, 15 nobody hold me to it. Let's say you spend R45 000 on that 16 unit. If you're charging R500 a month rental that's R6 000 17 a year, 10% return means you can pay up to R60 000 for that 18 unit and still make a reasonable return. So that's the 19 thinking. Now in fact having discussed it with other 20 consultants we came up with the terminology Mintel, mine 21 hotel. The other reason why this works is because your 22 shaft has a limited life. Now, if you put up bricks and 23 mortar once the shaft has served its purpose you demolish 24 all the bricks and mortar, whereas if you do these 25 containers and the thoughts where I had was you do it in a</p>	<p style="text-align: right;">Page 37789</p> <p>1 CHAIRPERSON: You know, you say people 2 complain about being in a steel cage but at the moment 3 they're living in – I think it's really just zinc, I think 4 it's actually corrugated iron shacks, aren't they? 5 MR SEEDAT: Absolutely. It's much better 6 than their current, what they have, yes. 7 CHAIRPERSON: So the objection to living 8 in a metal structure is apparently, that's apparently been 9 overcome. 10 MR SEEDAT: Ja. There's other benefits 11 if you do it with the community. Clearly these employees 12 who are single, they need their clothes washed, cleaned. 13 They need food. And within the U-shaped complex if you can 14 put a kitchen up, a canteen, a laundry, outsource that to 15 local members of the community you create an environment 16 and you're talking, just on Lonmin you're talking of 17 potentially up to 15 000 people who need the service. So 18 you create a business that the community also benefits. 19 Now, we thought of this even further because one of the 20 negatives, very mild word, negative, with the way we're 21 currently structured and the way we work on our mines is 22 that it [inaudible] meaning that an average migrant worker 23 only gets home once a year on average for four weeks. I 24 was involved in my previous life with running operations in 25 other parts of the world. In Australia they have the</p>

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1 concept of fly in, fly out.
 2 CHAIRPERSON: Can I say to you that my
 3 understanding is it doesn't work that way in Australia?
 4 And how does it work with the North Sea oil rigs? Same
 5 situation.
 6 MR SEEDAT: Same situation. I've
 7 actually lived on an oil rig for a couple of days and I
 8 must tell you the little steel unit that I lived in and
 9 shared with another person if one of you have to stand up
 10 the other person had to get out of the room. They're
 11 really small.
 12 CHAIRPERSON: They don't stay there for
 13 11 months and go home for a month.
 14 MR SEEDAT: No, they stay for two weeks.
 15 CHAIRPERSON: That's the point.
 16 MR SEEDAT: Ja, now, the problem in this
 17 country is that the lavenshire port system only allows the
 18 employees to get an extended break to go home once a year.
 19 There's another component to this. With the lavenshire
 20 port system we have we put up the shafts as I said earlier,
 21 could cost up to R10 billion, but you operate them for 270
 22 days of the year only. Now, in other parts of the world
 23 like Australia these operations run 365 days a year. We
 24 need to work towards that objective as well. If we do that
 25 we create additional value for the shareholder. 50% of

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1 that value, that's the number I used before, should be used
 2 to improve the living and working conditions of the
 3 employees. So not only can you then have the money because
 4 you're realising an asset you've got there anyway, not only
 5 do you have the money to put up better accommodation units
 6 but if you structure your system such you can try to ensure
 7 that your employees get home, let's say they work for two
 8 weeks then go home for a week, and you do it more
 9 regularly. Then it has other socioeconomic benefits,
 10 HIV/AIDS, etcetera, etcetera. So that's what I was
 11 alluding to earlier about you have to think through this
 12 creatively. You have to remove yourself from the current
 13 paradigm and think in a different paradigm. And I think
 14 with bold leadership this is possible. Now, I know that
 15 Anglo Gold, for example has also been exploring the
 16 possibility of working 365 days a year and they've gone to
 17 great lengths to get agreement with the unions on that.
 18 [15:38] It's not as simple as I say it is because if you
 19 want to run your shaft 365 days a year you have to change
 20 the configuration, so there's capital investment you have
 21 to do. So ideally you want to do it with a new shaft and
 22 possibly with some shafts that are more - so it's not
 23 something you do overnight, you do it over a period but you
 24 know I think this is the kind of creative solution we need
 25 to put together, otherwise the current paradigm will

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1 persist.
 2 CHAIRPERSON: I see. And of course if
 3 the people were living in these converted containers,
 4 they'd obviously have the essential utilities of fresh
 5 water, proper sanitation and electricity which is very
 6 important for maintaining a dignified standard of living.
 7 MR SEEDAT: And these units are more
 8 secure. You're not going to get - and a container is meant
 9 to travel and shift around the world, it is waterproof, it
 10 is made of such thick steel that it's not going to be
 11 broken into, so they have other benefits in terms of
 12 security, health, et cetera, as well. So I still believe
 13 there's a potential solution here but it needs strong
 14 leadership to make it work.
 15 CHAIRPERSON: It sounds affordable too.
 16 MR SEEDAT: Hopefully. I, my numbers say
 17 it should be but I think it takes - one of the things I
 18 suggested that we should do is engage the universities, the
 19 three universities in Gauteng, the architectural
 20 departments, set a challenge, set a prize and say, come up
 21 with a creative solution. So -
 22 CHAIRPERSON: Sorry, Mr Burger, we took
 23 over your examination in chief, the witness and I. Would
 24 you like to carry on with your questions?
 25 MR BURGER SC: Well, I'm so delighted

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1 that we've solved the housing problem in the land, so it's
 2 time well spent.
 3 CHAIRPERSON: Pity it wasn't solved years
 4 ago but we won't go there now.
 5 MR BURGER SC: Well, well, well, that's a
 6 debate for another day. Sir, I'm not going to finish with
 7 this leg and I want to deal with two subjects outside of
 8 phase 2 or stage 2, whatever it's called, and with your
 9 leave I'd like to do that now very briefly. One is the
 10 recent suggestion that the mine should have been closed and
 11 so, as I understand the proposition, there wouldn't have
 12 been a tragedy. And the other is the suggestion of less
 13 recent origin and that is that Lonmin shouldn't have,
 14 should have spoken to the strikers. With your leave, I've
 15 spoken to my learned friend Mr Chaskalson, I'll be very
 16 brief but I'd like to have the benefit of this witness's
 17 views on those two issues towards the end of my evidence -
 18 CHAIRPERSON: It sounds sensible, if may
 19 say so. Mr Chaskalson, you haven't got a problem, have
 20 you?
 21 MR CHASKALSON SC: I don't have a
 22 problem. I anticipate that it may need an opportunity for
 23 SAPS to cross-examine on these issues but Mr Semanya will
 24 obviously address that -
 25 CHAIRPERSON: Alright, Mr Burger, carry

<p style="text-align: right;">Page 37794</p> <p>1 on.</p> <p>2 MR BURGER SC: I'm indebted to you,</p> <p>3 Chair. Mr Seedat, you'll have known from consultations</p> <p>4 with me that there's recently been a suggestion that if the</p> <p>5 mine was closed we wouldn't have had the tragedy. Now, I'm</p> <p>6 now going very quickly because my time is limited but can I</p> <p>7 have the benefit of your views? We've debated at your</p> <p>8 consultation and perhaps you can deal with that, please.</p> <p>9 MR SEEDAT: I'll deal with the</p> <p>10 practicalities first and then I'll go on to the financial.</p> <p>11 A shaft, at all times, needs to be maintained. So even</p> <p>12 when you're not producing, you need essential services. On</p> <p>13 average a shaft like K3 will need between 150 and 200</p> <p>14 people on three shifts to maintain it. There's water</p> <p>15 pumping, there's ventilation, there's electrical, the</p> <p>16 shaft, you're using the cage to take people up and down,</p> <p>17 you have to keep all of those things going. Let me give</p> <p>18 you one real example of what could happen. If your</p> <p>19 ventilation stops, in some shafts you could have,</p> <p>20 potentially, methane build-up. You still have electricity,</p> <p>21 you have the potential of a blast. On the shallower shafts</p> <p>22 you have water, the water table is higher than the shaft,</p> <p>23 you have water ingress into the shaft. If it's not pumped</p> <p>24 regularly it can decant out of the shaft and create</p> <p>25 environmental problems. You've got 11 shafts, so you're</p>	<p style="text-align: right;">Page 37796</p> <p>1 there's an explosion or you have water not cooling and you</p> <p>2 can have the furnace failing as well. So not practical to</p> <p>3 turn a furnace off overnight.</p> <p>4 The same with the base metals refinery. The base</p> <p>5 metals refinery is right next to the smelter, the furnaces,</p> <p>6 and similarly it puts all of these products in suspension,</p> <p>7 through the various circuits and then produces, separates</p> <p>8 from there the different components and it's a base metal –</p> <p>9 they're associated minerals that are pulled out there. So</p> <p>10 you can't just shut that overnight. You've got to do it</p> <p>11 over a good few days. So those are the practical reasons</p> <p>12 why you couldn't just, let's say on that Monday the 13th,</p> <p>13 switch off the lights and let's leave, take everybody out</p> <p>14 of harm's way. You can't do that, you need these essential</p> <p>15 service people.</p> <p>16 I spoke earlier about Lonmin's financial</p> <p>17 position. In the midst of this, as I mentioned – well,</p> <p>18 prior to this we had gone on a road show to test the market</p> <p>19 for a bond, not successful. Ore was not being produced,</p> <p>20 but when this stopped, when the strike started you had</p> <p>21 stockpiles of ore and you had material in process. To</p> <p>22 enable Lonmin to maintain its liquidity to a level that</p> <p>23 satisfies its covenants with the bank, Lonmin literally</p> <p>24 over a period drained all of that product and produced</p> <p>25 finished product and sold it and that's how it managed to</p>
<p style="text-align: right;">Page 37795</p> <p>1 talking of 11 times, whether it's 150 or 200, you're</p> <p>2 talking circa 2 000 people you need.</p> <p>3 Let's take it further. Next to each shaft is a</p> <p>4 concentrator. The concentrator takes the ore, crushes it,</p> <p>5 mills it, puts it into a liquid solution and then you do</p> <p>6 the separation and you get roughly, the rough cut of the</p> <p>7 PGMs and the other products. You can't just switch that</p> <p>8 off overnight. You've got to drain it in an orderly way,</p> <p>9 otherwise if you just stop, the material settles and you're</p> <p>10 going to spend days, weeks, de-blocking the system when you</p> <p>11 have to restart it, at significant cost. That's the</p> <p>12 concentrator.</p> <p>13 From the concentrator the material goes to the</p> <p>14 smelter. Now, the smelter operates, there's two furnaces</p> <p>15 in the case of Lonmin, the smelter operates at temperatures</p> <p>16 above 1 000 degrees. These are highly sophisticated</p> <p>17 electrode furnaces. In other words, you have positive and</p> <p>18 negative electrodes and the material in between and it arcs</p> <p>19 and it creates heat and these are water-cooled units. When</p> <p>20 we have to maintain one of these furnaces, we have to shut</p> <p>21 it down and that takes two weeks and if you want to keep it</p> <p>22 alive but not producing because you're in this crisis</p> <p>23 situation, you still need people there to maintain it.</p> <p>24 You've got water systems around it, if those water systems</p> <p>25 fail you can either have water ingress into the furnace and</p>	<p style="text-align: right;">Page 37797</p> <p>1 keep on the right side of its financial covenants. If you</p> <p>2 recall the last extended strike, legal strike that we had</p> <p>3 in the country, the analysts were saying that this how many</p> <p>4 of the companies had managed to keep themselves financially</p> <p>5 afloat, they'd been draining their system, using up their</p> <p>6 work in progress.</p> <p>7 So those are really the reasons why, I mean I say</p> <p>8 this with a bit of cynicism but the guys, the people who</p> <p>9 were on strike, those that lived in the hostels still went</p> <p>10 back to the hostel to have their meals. So if you had sent</p> <p>11 the people there were doing the cooking of the meals away</p> <p>12 as well, because you can't selectively – you'd create a</p> <p>13 further problem for yourself. So not a real practical</p> <p>14 solution that could have been implemented, you know, within</p> <p>15 a couple of days or in some cases within a couple of weeks.</p> <p>16 MR BURGER SC: Thank you. Just briefly</p> <p>17 on that subject, the other subject is the talking to or</p> <p>18 negotiating with the strikers. Now I thought I would put</p> <p>19 more to you but let me just bring you up to date with the</p> <p>20 evidence thus far before the Commission. The attitude of</p> <p>21 the strikers was told to us by Mr Nzuzo who says he was the</p> <p>22 second IC of the strikers and let me just briefly refer to</p> <p>23 what his evidence was. It's in SSSS1 at page 20 and 21, if</p> <p>24 I may briefly take you there. That's the little bundle</p> <p>25 before you. At page 20 of it and page 35992 opposite line</p>

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1 20. My learned friend Mr Bham is asking him questions.
 2 35992 opposite line 21 Mr Bham says, "If at the time Lonmin
 3 did not agree to the demand for R12 500, would the strike
 4 have continued?" And Mr Nzuzza said, "Yes, the strike would
 5 have continued." And at page 21, that's the record page
 6 35997 opposite line 20, really line 22, Mr Bham said, "Is
 7 it fair to conclude from what we've seen shown" – and
 8 they've looked at a video – "from all those video clips,
 9 that there were two not-negotiables for those of you who
 10 were on the koppie at the time, the strikers? The first
 11 was that you wanted Lonmin management to come to the koppie
 12 and the second was, you wanted your demand for payment of
 13 12 500 to be met." He said, "Yes, that's what we wanted."
 14 Mr Bham, "And if you don't get what you wanted the strike
 15 would continue?" "Yes, I've already said so." Now that's
 16 the attitude, an attitude of the striker.
 17 Let me give you the AMCU attitude. The AMCU
 18 attitude you'll find in that same bundle at page 22. It's
 19 a letter we found first in the AMCU bundle but we only saw
 20 page 1 of it. We've got page 2 now, so let me give you
 21 both pages. It's written on the 10th of August 2012. It's
 22 at the time of the strikers going to your headquarters and
 23 there's a debate between Mr Mokwena and Mr Mathunjwa and
 24 this is what he writes apropos of that to Mr Mokwena. He
 25 says in the middle of that page, "As AMCU we were not aware

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1 of any march directed to the employer, we only knew about
 2 this when you made the telephone conversation." First
 3 bullet, "However, at AMCU we propose that whoever will be
 4 receiving the memorandum" - they expected that the strikers
 5 would hand over a memorandum, that didn't happen but that's
 6 what he believed – "that whoever will be receiving the
 7 memorandum must inform the marchers that by receiving such
 8 memorandum does not set any precedent." And in the second
 9 bullet, I pick it up in the second line, "For non-unionised
 10 employees there are management structures dealing with
 11 grievances, hence if there are issues of common concern,
 12 should be communicated via such structures.
 13 And I read selectively page 23 over the page, "We
 14 urge management not to take extreme measures in addressing
 15 this predicament by not giving undue recognition to the
 16 sinister forces which are not known to ourselves." He's
 17 clearly fingering a third force there at the time and
 18 that's what he is saying, I'll argue, and then he concludes
 19 to say, "As AMCU we suspect that there are forces behind
 20 this which, as leaders, we must address amicably." Now
 21 that's the attitude of one of the two trade unions.
 22 Now, I must also tell you that on the Wednesday
 23 before the tragedy these two unions leaders and Mr Barnard
 24 Mokwena go on national radio. They have a verbal shootout
 25 and at the end they decide the two unions leaders will go

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1 to the koppie and speak to the strikers to try to defuse
 2 the situation, that doesn't work. Against that background
 3 can I ask you, what is your reaction to the suggestion that
 4 Lonmin should have spoken to the strikers during the period
 5 10 to 16 August 2012 and so avert the tragedy?
 6 MR SEEDAT: As I mentioned earlier, I've
 7 been in the mining industry for the better part of 30, 32,
 8 33 years. Whenever we were faced with situations where you
 9 had an unprotected strike, people marching, you had to
 10 position it that you made that situation move back into a
 11 regulated environment, honouring the unions that represent
 12 them, ensuring that the agreements that are in place are
 13 honoured, et cetera. And in this case I would have seen it
 14 no differently, so on that Friday I think the management -
 15 I wasn't involved but I'm giving you my opinion – the
 16 management team's approach that said, let someone from
 17 security get this memorandum from the workers and pass it
 18 on to us and Mr Mathunjwa said, once you get that, talk to
 19 the unions leaders and we'll see how we can take this
 20 forward. So I thought that was the right approach. I
 21 understand the workers said, no, we can't read or write you
 22 know, we're not going to give you a memorandum. I mean I
 23 know, I've seen photographs with posters on that said "We
 24 want R12 500." Clearly some of them could read and write.
 25 So I think that was the right approach on the 10th of August

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1 and as things got worse, when I got involved on the 15th and
 2 I recall on the 16th when I came to LPD and I met with the
 3 management team, as I mentioned earlier, the idea of
 4 talking to the workers was discussed and I know it was
 5 discussed prior to that when I wasn't there. But the
 6 security situation, you know, in all my time that I've been
 7 in the mining industry, to have two security guards killed,
 8 to have two policemen killed in addition to all the other
 9 employees that were killed, I think it was absolutely the
 10 right decision to say we're not sending anyone out there.
 11 The police is not respected, they've been killed, how do
 12 you expect them to protect us, a manager, and if you go
 13 there and you say, sorry, we can't give you R12 500, how –
 14 have you thought about how the workers would react? Could
 15 they take the manager hostage, could they make an example
 16 of him in a more tragic way? And I recall one of the
 17 managers saying, you know, I'll go up if it's the right
 18 thing to do and his wife said, I will divorce you if you go
 19 up. So the circumstances were such that we did not see,
 20 and I support the management's view on this, Mr Chairman,
 21 that it wasn't the right environment to send someone out to
 22 speak. As I said, historically when something like this
 23 happens you get the workers to submit a memorandum, go back
 24 to work, we will discuss it with the unions and we will
 25 address this through the unions structures. That generally

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1 works. This is, in this case clearly the experience of the
 2 past was not going to be the same.
 3 MR BURGER SC: Can I ask you this because
 4 I must argue this at the end of the day and I'm not clear
 5 in my own mind, so help me. Assume you went to a workers'
 6 committee, assume they had three or four representatives,
 7 assume you have a safe place and you sit down and you're
 8 all very calm and you talk. What do you then say to them?
 9 You know what they want, they want R12 500. What do you
 10 say, as employer, to them?
 11 MR SEEDAT: We can't meet your demand,
 12 it's financially not viable.
 13 MR BURGER SC: But what happens then?
 14 MR SEEDAT: Well, you know, sadly that's
 15 exactly what happened after the 16th. The workers did
 16 appoint, I think through the assistance of Bishop Seoka, he
 17 was here earlier, they appointed – they got a group of the
 18 workers together, we got a management team together, we got
 19 the unions involved and I'll talk a little bit about that
 20 and they all sat around a table and eventually we moved
 21 away from the R12 500 demand and came to a solution which
 22 everybody could live with. It wasn't ideal but everybody
 23 could live with it, but prior to the 16th they wanted the
 24 manager to come to their mountain and talk to the 3 000-odd
 25 people there, many of them carrying dangerous weapons,

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1 there was a history of 10 people being killed. It's – to
 2 have gone up there and said, you're not going to get
 3 R12 500, somebody would have been hurt badly. After the
 4 16th I think some sanity prevailed –
 5 MR BURGER SC: I was criticised for that
 6 and sorry I interrupt you, I was criticised for calling
 7 that a watershed, the 16th. Why do you stress the 16th?
 8 MR SEEDAT: Well, you know, until the 16th
 9 we saw no way of talking to the workers in the way we used
 10 to do it historically, appoint a group of representatives,
 11 come into the management, meet with management, but it say
 12 that a bit hesitantly because at that time, as you saw, the
 13 unions – AMCU and I know NUM in the position said you do
 14 not talk to these people and the words used were, "You are
 15 encouraging anarchy." So we would have had to get the
 16 agreement of the other unions and said in the best
 17 interests of resolving this, please agree that we have
 18 these discussions and you participate. And by the way,
 19 that's what happened after the 16th, I went and saw Frans
 20 Baleni on the 23rd of August and I said, Frans, we cannot
 21 continue like this, you cannot have people having lost
 22 their lives and perpetuating the situation, will you agree
 23 to AMCU sitting at the same table as you and the worker
 24 representatives so that we can resolve this? And then he
 25 agreed to it but I have no doubt that before the events of

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1 the 16th if I went to him with that proposal he would have
 2 said, no, we have a recognition agreement with you, we are
 3 the bargaining union, you cannot talk to anyone else.
 4 MR BURGER SC: Mr Chair, I see it's five
 5 to four. My time is up. Ideally I would like to have
 6 another 15 minutes to do the rest of phase 2 which I'd
 7 planned, but I will seek leave for that on Monday morning
 8 and see whether I can get another 15 minutes.
 9 CHAIRPERSON: Alright, we'll look at it
 10 and look at the programme and deal with it then. So we'll
 11 adjourn now till tomorrow morning at 9 o'clock. You're
 12 excused for the moment, Mr Seedat, because I understand
 13 your colleague Mr Mokwena is coming tomorrow.
 14 MR SEEDAT: Yes.
 15 CHAIRPERSON: And I take it you'll come
 16 back again sometime on Monday.
 17 MR SEEDAT: That's right.
 18 CHAIRPERSON: That's correct, is it, Mr
 19 Wesley?
 20 MR WESLEY: Well –
 21 CHAIRPERSON: Or is it Tuesday?
 22 MR WESLEY: It's likely to be Tuesday but
 23 if there's a request for another five minutes in chief, it
 24 should happen on Monday, not Tuesday so we know what –
 25 CHAIRPERSON: I think there's a request

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1 for 15 minutes extra, but I would hope we can put it in,
 2 fit it in somewhere on Monday. Let me tell you, let me say
 3 now for the benefit of those who are interested in what's
 4 happening on Monday. We're starting at 9:30 but we're
 5 going to have a half-hour lunch break from one until half
 6 past one and we're going to sit until quarter past four so
 7 we make up the half-hour. So those who are not going to be
 8 here tomorrow, they may like to be told now that we're
 9 starting at half past nine on Monday, with the adjustments
 10 that I've mentioned but the witness I suppose will be back
 11 here on Monday, so you can insert your extra 15 minutes of
 12 examination in chief on phase 2.
 13 MR BURGER SC: Thank you, Chair.
 14 CHAIRPERSON: We'll now adjourn till
 15 tomorrow morning at 9 o'clock.
 16 [COMMISSION ADJOURNED]
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